

Sum. & Lib. Barnard

Law Quibbles :

OR, A
TREATISE
OF THE

Evasions, Tricks, Turns and Quibbles,
commonly used in the Profession of the
Law, to the Prejudice of Clients, and o-
thers ; Necessary to be perus'd by all At-
torneys, and those who are or may be con-
cern'd in Law-Suits, Trials, &c. to avoid
the many Abuses, Delays, and Expences,
introduc'd into Practice.

WITH AN
ESSAY on the *Amendment and Reduction*
of the Laws of *England*.

The **Second Edition**, Corrected and Enlarg'd.

To which is added,
The Manner of Punishing *Bailiffs* for taking
unjust Fees, making false Arrests, False Imprisonment, &c.

And also,
A new Propos'd Act of Parliament, for a thorough
Regulation of the Practice of the Law.

In the *SAVOR*:

Printed by E. and R. NUTT, and R. GOSLING,
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THE
PREFACE.

THE many Quibbles
and Evasions, of late
introduced in the Practice of
the Law, are sufficient to
Influence any one of the Pro-
fession (especially a Person
who has suffer'd by them)
to undertake a Treatise that
may expose such Artifices,
and give the World a neces-
sary Caution against them:

The PREFACE.

And this being a Topick which is wholly New, and of great Importance, all Sorts of Persons are in some Degree interested therein.

For these Reasons, I have ventured upon this Subject; and if I have laid open some Things in the Profession, more than they may Approve whose Interest it is to oppose the Discovery, this will be an Advantage to the Publick; and the Publick Good ought in all Cases to be principally regarded. But tho' I have inserted many of the Tricks and Quirks in the Law, I have not endeavour'd

THE PREFACE.

deavour'd at, neither do I pretend to mention them All: The following Work is not compos'd of Quibbles alone; for it contains the various Turns and Subtilties to be met with in the Practice and Abuse of our Laws; what People may do, and what they may not do; what will be Binding, and what will be not so; with many extraordinary and curious Cases, proper to be known as a Guard against Impositions.

I have no where thrown any Reflections on the Profession of the Law, which
is

The PREFACE.

is in it self Laudable and Honourable : If any Persons are expos'd, they are the foul Practisers only, who are a Scandal to it. That this is True, is Manifest throughout ; and there is nothing more Absurd and Ridiculous, than to find many of the Attorneys of this Age, value themselves on their being Masters of a Quirk, or Quibble, a Turn, or an Evasion ; and whose boasted Qualifications lie in these, without any substantial Knowledge and Learning in the Law, which ought to make a Practiser Compleat.

THE PREFACE.

pleat. *And I am sorry to say, that there are even Gentlemen at the Bar, who are not free from Imputations of this Kind.*

This is all I have to observe by way of PREFACE to the following Work; unless it be to acquaint the Readers in general, that as this Book was chiefly and originally compos'd for their Use and Instruction, so they will always find it consistent with their Interest to give it due Encouragement.

I shall only add, that to this Edition, besides considerable Additions and Corrections,

THE PREFACE.

*tions, I have subjoin'd a new
propos'd Act of Parliament,
for a thorough Regulation
of the Practice of the Law,
which I have at length had
Courage to insert; and tho'
it hath been esteem'd too
Good and Honest to succeed,
by a learned and ingenious
Gentleman of my Acquain-
tance, I hope one Time or
other to see some Part of it
at least, made the Law of
the Land.*

Law

Law Quibbles.

Acceptance.

AS every Person ought to be cautious in all his Transactions, otherwise many Inconveniencies will ensue, so particularly in Case of *Acceptance*; which, rashly entered into, deprives a Man of the Benefit of the Law.

If a Lessor accepts of his Rent, due at a *Day afterwards*, it will bar him of his Entry for a Condition broke before; but if the Rent was due at a *Day before*, whereupon the Condition is broken, a Man may accept of that Rent, and yet have the Benefit of Re-entry: In the first Case, the Person accepting owneth the Lease to have Continuance; which he might have avoided by Non-acceptance of the Rent. *Co. Lit. 211.*

Persons entitled to *Reversions*, &c. must take Care how they accept of Rent from Tenants,

lest they should give an Affirmance to a Lease wrongful made, and thereby make it good: But if a Parson make a Lease for Years, not warranted by the Statute of 32 H. 8. and dieth, no Acceptance of Rent by the Successor will make it good. *Co. Lit.*

If a Lessee, (Tenant) for Years, make an Assignment of his Lease, the Lessor, (Landlord) before Acceptance ~~from~~ Rent of the Assignee, may charge either the Lessee or Assignee with the Rent, at his Election: But if he once accepts the Rent of the Assignee, having Knowledge of the Assignment, his Election ceases. 3 Rep. 23.

A Lessee for twenty Years accepts of a Lease for ten Years of the same Land; the Term of twenty Years is, in Law surrendered and determined: The new Lease shall in this Case take Place, which could not be but by the Lessee's Acceptance; by which, the Lessor hath Power to make a new Lease. 2 Roll. 469.

If a Man make a Lease for Years to begin at a Time to come, this future Interest cannot be Surrendered by Deed; but if the Lessee, before the Time of commencement, Accepts a new Lease of the same Land, this will be a surrender in Law of the former Lease. *Perk. Sect. 601.*

If an Obligor, &c. pay a lesser Sum of Money, instead of the whole, before the Day appointed, &c. and the Obligee accepteth it; this is said to be a Satisfaction. 1 Inst. 212.

Acquittance.

If a Tenant be in Arrear of Rent for twenty Years back, and his Landlord gives him an Acquittance for the last Rent due, all the rest of the Rent

Law Doubbles.

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Rent in Arrear will be presumed to be paid: And so strong is this Presumption of Law, that no Proof will be admitted against it. *Co. Lit.* 373.

No Man should regularly execute a Deed, wherein a Consideration of Money is acknowledged to be paid, before the Money is actually paid, mentioned in the Acquittance.

ACTIONS.

Upon any Specialty, if Money be due, an Action of Debt only lies: In other Cases, there may be Action of Account, Case, Covenant, &c.

If a Man oweth another 10 l. and hath a Note under his Hand for the same, without a Seal, an Action of Debt upon a *Mutuat* lies; and then the Defendant may wage his Law: But if the Plaintiff commences an Action on the Case upon the Defendant's Promise to pay the same, which the Law implies; then the Defendant loseth his Benefit of Wager of Law. And in many *Actions of Debt*, it is the safest Way to make them *Actions on the Case*, wherein if you prove the Money lent, &c. the Law implies the Promise; and by that Means the Defendant is bar'd from waging his Law. *Comp. Att.* 6. 111.

Upon a Bond or Bill for Payment of several Sums at several Days, no Action of Debt lies 'till all the Days are past: But if a Man be bound in a *Recognizance* to pay 100 l. on four several Days, after the first Failer in Payment of the first Sum, Execution shall be awarded for that Sum without staying 'till the last Day is past: And for a Covenant or Promise, after the first Default, an Action of Covenant lies for the one, and Case for the

the other. Note these Diversities. *Co. Litt.* 292.

x Personal Actions die with the Person: As if a Battery, &c. be done to a Man, and he that did the Battery, or the other, die, the Action is gone: If a Lessee for Years commit Waste, and dies, no Action will lie against his Executors or Administrators: And if a Gaoler suffers his Prisoner in Execution to Escape, no Action lies for it against his Executors, after his Death. *Noy Max.*

So that you must take Care that these Actions be commenced *in Time*: And in other Cases there is a Time limited for bringing of Actions; As all Actions of Debt, Account, Detinue, Trespass, Replevin, and all other Actions on the Case, unless for Words, must be brought within six Years after the Cause of Action: All Actions of Assault and Battery and Imprisonment are to be put in Suit within four Years after the Cause of Action: And all Actions of the Case for scandalous Words, within two Years after the Words spoken. And if in any of these Cases, Actions are brought after those Times, the Statute of Limitation may be pleaded. *Stat. 21 Jac. cap. 16.* But no Time is limited for Debt on Specialties. *2 Inst. 207.*

Actions of Trespass, Covenant, Battery, &c. may be laid in any County, at the Plaintiff's Pleasure, tho' both the Plaintiff and Defendant dwell out of the same: But every real and mix'd Action is to be laid in the *same County* where the Cause of Action arises, or where the Lands and Tenements do lie, &c. *Comp. Att. 111.*

• If a Man prosecutes me, and his Suit is utterly *without Ground*, and that known to himself; may have an Action on the Case against him for unjust Vexation, and recover Damages. *Fitz. 38*

But a Man may sue another for more than is due, where an *Account is depending*, and the Defendant is to prove the Payment.

Additions, Vide Release.

Appearance. Vide Bail.

Arrests.

All Persons attendant on Courts of Record, are *privileged* from Arrests during their Attendance: And Arrests are prohibited to be made on a *Sunday*, unless it be for Treason, Felony, &c.

In Cases of Arrests for Debt, Trespass, &c. no Door may be broke open, or Latch may be drawn, to execute the Process: But where a Felony is committed, a Door may be broken open to arrest the offender, tho' not in Civil Cases: The first Sort of Arrests are of a *private Nature*; but the last concern the *publick Good*. *Plowd. Com. 322.*

When a Person is arrested, he must either give Bail or Appearance, and proceed to Trial; or compromise the Matter with the Plaintiff, before the next Term, otherwise he will be serv'd with a Declaration, and rule to plead, &c. which will put him to a Guinea or two Guineas *Expences*.

On an *Escape Warrant*, and for Felony, &c. an Arrest may be made on a *Sunday*. And sometimes Bailiffs have arrested Persons for *considerable Debts*, on a *Sunday*, and detain'd them 'till the next Day, and then serv'd a lawful Process on them; but this is the worst Kind of false Imprisonment.

See more of *False Arrests*, &c. under *Bailiffs*.

Arrest

Arrest of Judgment.

After Verdict is given in a Cause that has been tried, Judgment and Execution follow; but Judgment may be arrested in the following Cases.

As for Want of *Notice* of Trial; for that the Record *differs* from the Deed pleaded, in some material Point; for some material *Defect* in Pleading, &c. or for that the Plaintiff before Trial *treated* the Jury: And herein all Matters of Fact are to be made out by Affidavit.

To move in Arrest of Judgment, is to shew Cause why Judgment should not be stopp'd.

Articles.

In all Cases of Articles of Agreement, especially relating to Matters of Importance, it is necessary that Bonds should be enter'd into on both Sides, with Penalties sufficient to oblige a Performance; which Penalties may be easily recovered at Common Law; otherwise Articles of Agreement I take to be no more than the *Foundation of a Chancery Suit*; where either of the Parties are litigious, or think it their Interest to fly from their Contract.

Assignments.

A Lessee for Years makes an Assignment of his Term, and dies, his *Executors* will not be answerable for Rent that is due, after his Death: And if his Executors or Administrators assign over their Interest to another, Action of Debt may
not

not be brought against them for the Rent. *Noy*
71.

But this is understood where *Notice is given* to the Lessor of the Assignment, and he gives his *Consent* to the same; for otherwise the Executors will be liable, as the Landlord is at a Loss where to apply himself for his Rent; and he has not determined his Choice, by Acceptance of Rent of the Assignee.

If a Landlord receives Rent of A. Assignee of B. his Tenant; and A. finding the Rent of the House too great, Assigns to *John Doe*, the Landlord who accepted A. the Assignee, as Tenant, by receiving the Rent, shall not, after the Assignment, Sue A. for any more Rent; for he that admits of *One Assignee*, admits of *Twenty*. *Comp. Attorn.* 491.

An Assignee of Lands shall be receiv'd to pay the Money to save his Land, tho' he be not named in a Condition: But he shall *not receive* any Money, by Virtue of a Condition, unless he be named. *Co. Lit.* 215.

An *Executor* appointed by Will, is an Assignee in Law to the Testator's Estate.

Attachment. Vide Distress.

Attornies.

Every Attorney is to enter his *Warrant* of Attorney in every Suit, commenced in a Court of Record, on Pain of forfeiting 10 l. and Imprisonment, &c. An Attorney, Solicitor, &c. shall not be allowed any *Fees* laid out for Counsel, &c. unless he hath Tickets thereof sign'd by such Counsel; And he shall also give to his Client *true*

Bills of all Charges, under his Hand: If he *delays* his Client's Suit for Gain, or demand more than his due Fees and Disbursements, the Client shall recover Costs and treble Damages, and the Attorney be disabled to practise.

None are to be *admitted* Attornies in Courts of Record, but such as have been brought up in the same Courts, or are well skill'd in soliciting of Causes, and of an honest Disposition: And they are not to admit of any others to follow a Suit in their Names, under the Penalty of 20*l*. See the Statutes 3 *Jac.* 1. and 13 *W.* 3.

N. B. All this is very good, but the greatest Part of it wholly disregarded.

Avoidance.

An *Act* of Parliament may not be avoided but by Act of Parliament: An *Obligation*, or Deed in Writing, cannot be discharged but by Agreement in Writing: And an *Use* raised by Declaration and Limitation, may be made to cease only by an Instrument of the same Nature. *Bac.*

Every Contract and Agreement must be dissolved and avoided by Matter of as *high a Nature* as the Agreement itself. 5 *Co.* 26.

Authorities.

If a Man has a Servant, and give him Authority to sell Goods, and he doth so, it is the Master's Sale by him. And if a Man's Servant, known as such, be sent by his Master to a Fair, or Market to buy Goods, his Master shall be charged with the Payment: But the Goods are to come to his Use; though it is otherwise in Case

Case of a Factor, when the Possession of the Master is not necessary. *Plowd.* 475.

If a Servant borrows Money in his Master's Name, the Master will not be charged, unless he give Authority to his Servant for that Purpose, or the Money come to his Use. *Noy Max.* 99. But in Case of Receipts by Servants, where it has been usual for the Servant to receive his Master's Money, Rents, &c. Payment to the Servant will bind the Master, tho' he doth not receive it of his Servant.

Where a Person gives Authority to another, by Letter of Attorney, to deliver Livery and Seisin of Lands between certain Hours, and he doth it *before or after*; or to deliver it in the Capital Mesuage, and he doth it *elsewhere*, the Act of the Attorney is void: For all Authorities are to be strictly pursued, so that Care must be taken to avoid this Inconvenience. *Plowd.* 475.

Authorities generally determine by the Death of the Party which giveth them.

Awards.

Things and Actions Personal, &c. may be submitted to Award: But Debts due on Record, or upon Bill, or certain Contract; (*which admit not of Dispute*) Things relating to a Freehold, Leases for Years, Matrimonial Concerns, and Offences of a Criminal Nature, may not be determin'd by Award; for these are not Arbitrable, *1 Roll. Abr.* 244. *1 Cro.* 223.

Awards must reduce Things to a Certainty, otherwise they will be void: And if an *Umpire* (*viz.* a third Person) be appointed to determine the Controversy the *same Day*, in Case the two Arbitrators

Arbitrators can't agree in their Award, the Arbitrators are first to declare, that they will meddle no further, and signify their *Disagreement* before the Power of the Umpire shall take Place; and otherwise the Umpire would proceed at an Uncertainty. 2 *Saund.* 130.

In Awards, *either Party* must be appointed to give or do something to the other: For where all is to be performed on the one Part, and none on the other, the Award is void.

Vide Revocation.

Bail.

IN all Actions of Debt, where the Defendant is indebted to the Plaintiff to the Value of 10 *l.* or upwards, *Special Bail* is required; and the Sureties must be Men of Substance, answerable to the Action. A Man worth 100 *l.* is a good Surety in common Cases, where the Debt is not large.

If the Action be brought for a Debt that is under 10 *l.* it requires only an *Appearance*; and then the Attorney for the Defendant may back the Sheriff's Warrant, by indorsing that he will appear for the Defendant at the Return of the Writ, and file common Bail; wherein any Sureties are taken of Course, as *John Doe* and *Richard Roe*, it being nothing but meer Form. But an Attorney not appearing for his Client, is liable to a Fine of 5 *l.*

•I have

I have known *Special Bail* insisted upon, when a Man has been arrested for a Debt under 10 l. by enlarging the Sum in the Writ; as where the Action is laid for 20 or 30 l. &c. when it is usual only to lay it for double the Debt: And this may be done, so as you take Care not to Declare for more than your Debt: (tho' at the Return of the Writ, the Bail may be taken off, on Motion before a Judge.) But I take it to be a very unfair and barbarous Practice.

To obtain a Man's Liberty under Arrest, besides turning him over to the Rules of the *Fleet* and *King's Bench*, by *Habeas Corpus*, there is another Method sometimes practis'd, for Want of Bail; viz. The Defendant confesses Judgment to the Plaintiff, which makes all he has liable to the Debt: But if no *Attorney* for the Defendant is present, the Court of *B. R.* will set aside the Judgment, supposing it to be done through Force, or Fear. 1 *Ventr.* 310.

In Writs of *Error*, &c. the Defendant and his Sureties are to enter into Recognizance, in double the Sum of the Debt, that the Defendant hath good Cause of Error, and will follow the Writ with Effect, &c. When a Cause is remov'd out of an Inferior Court, the Plaintiff, or his Attorney, are to enter *Caveats* with the Justices of the Court, for good Bail: And the Attorney for the Defendant must give Notice to the Plaintiff of the Time when the Bail shall be put in, and of the Names of the said Bail, and where they live, that the Plaintiff, or his Attorney, may except against the Bail, if they think fit. *Comp. Attorn.* 54, 55, 64.

In Actions of Battery, Conspiracy, &c. and on the Case for slanderous Words, tho' you are likely

likely to recover great Damages, yet can't you of Course hold the Defendant to Special Bail; In Actions of Covenant (unless to pay Money) *Bail is not required*, because the Damages are uncertain 'till Declaration: In Actions of Account, Trespass, *Ejectione firma*, on Penal Statutes, &c. good Bail is not insisted on; nor is it requir'd in Actions against Executors or Administrators, unless it be where they have wasted the Goods of the Testator.

But in some of these Cases, Special Bail has been taken by Order and *Motion* of Court. The Penalty of Bail Bonds is usually double the Sum mentioned in the Writ.

Bail Bonds may be assigned by Sheriffs, &c. to a Plaintiff requesting the same, by Indorsement; and if forfeited, Action may be brought in the Plaintiff's Name, &c. *Stat. 4 & 5 Annæ.*

A Bail, in Discharge of himself, may bring in the Principal, but it must be done in due Time.

Bailiffs, false Arrests, &c.

The *Impositions* of Bailiffs are usually so great, that there is occasion to take some Notice of the Laws under this Head, and which restrain them therein, with relation to Arrests.

By Statute, if any Attorney, &c. maliciously cause any Person to be *arrested*; or any Sheriff grant Warrants for Arrests before the Receipt of the Writs, they shall forfeit 10*l.* and treble Damages. And no Sheriff, Bailiff, or other Officer, shall carry any Person under Arrest to any *Tavern, Ale House*, or other publick drinking House without his Consent, so as to charge him with any Beer, Ale, Wine, &c. but what he shall freely

ly call for; nor demand or receive more from him for the Arrest, or *Waiting*, than by Law ought to be, until Bail procured, &c. nor take or exact any more for keeping such Person out of Prison, than what he of his own voluntary accord shall truly give; nor take any Thing for Lodging but what is reasonable, or what shall be adjudged so by the next Justice of Peace. Stat. 8 & 43 Eliz. 22 & 23 Car. 2. c. 2.

By the 23 H. 6. c. 10. The Bailiff's Fee for an Arrest, is no more than four Pence. In the Courts of the City of London, and other Courts, One Shilling, and no more, can lawfully be demanded; and yet now, by Custom, Five Shillings is given in all Cases for an Arrest. But this hath been sometimes disputed; and Bailiffs cannot legally take any Thing but what is allowed by the Statute 23 H. 6. and subsequent Acts.

A Bailiff ought to shew his Warrant when the Party Submits, if required: And if a Person say, *I Arrest you in the King's Name*, &c. the Party ought to obey, tho' he knows not whether he be an Officer or no; but if it appears afterwards that he was no legal Officer, an Action of *false Imprisonment* lies against him; and if it be certainly known that the Person is no Officer, he is not obliged to obey. Co. Lit. 9.69.

If a Warrant be granted to arrest or apprehend a Person, where there are *several of the Name*, and the Bailiff, or Officer, Arrest a wrong Person, he is liable to Action of false Imprisonment: And if he Arrests a Man without Warrant, tho' he afterwards receives a Warrant, it is the same. Dy. 244.

Action

Action of false Imprisonment lies against a Bailiff, for Arresting one after the *Return* of the Writ is *past*. And if a *Process* be *unduly obtain'd*, and the Party against whom it is had be thereon taken and imprison'd, an Action of false Imprisonment doth lie by the Party imprisoned, against him at whose Suit he is imprisoned; but not against the Officer who executes the Process. 2 *Inst.* 482. *Mich.* 24. *Car. B. R.*

If a Man be any Ways *unlawfully detain'd*, it is false Imprisonment; and considerable Damages are recoverable in these Actions; for the Law very much favours Liberty. 1 *Inst.* 124. And besides Actions of false Imprisonment in common Cases, if Bailiffs Demand more than their just Fees, when offered them, and detain a Person thereupon, it is false Imprisonment: And when they take Fees not warranted by Law, it is Extortion, which, by the Common Law, is punish'd by Fine and Imprisonment; and the Manner of proceeding against them is by Indictment at the Quarter-Sessions. By Stat. *Westm.* 1. 30. 3 *E. 1.* Officers of Judges, &c. guilty of Extortion, are to render treble Value, &c.

And the Stat. 22 & 23 *Car. 2. c. 2.* gives Power to Justices of Peace, to determine what it is reasonable for Lodging any Person in Custody, &c. so that in such Case, a Bailiff may be summoned before a Justice, and be there Ordered and punished: And the Judges, on Complaint, will punish Misbehaviour of Bailiffs. Vide *Arrests*.

Banishment. See Coverture.

Bargain

Bargain and Sale.

Tenants for Life are not to make Bargains and Sales of their Lands; for, if they do by *Deed inrolled*, it is a Forfeiture of their Estates. 4 Leon. 251.

A Bargain and Sale of Lands can't be to one Man to the *Use of another*: But it must be to the Use of the Bargainee only: Before Entry, the Bargainee can't bring Action of Trespass, tho' he may assign, surrender, &c. 2 Cro. 52, 146. Hob. 136.

If Money is mentioned to be paid in a Bargain and Sale, as a *Consideration* for the Lands, and in Truth no Money is paid; this is said to be a good Bargain and Sale. Dy. 90. But by Style's Reports, if a Deed expresses a Consideration of Money upon a Purchase, this will be *no Proof* upon a Trial, that the Money was actually paid; but the same is to be made out by Witnesses. Style 370.

Bargains and Sales made of Leases for Years, Goods and Chattels, &c. need not have Inrolment, which is only necessary where a Freehold passes; and then it must be done within six Months. Stat. 27 H. 8.

Bastards.

A Child born before Marriage, every one knows, is a Bastard; but if it be a *Day after Marriage*, between Parties of full Age, it is no Bastard, unless there be an apparent Impossibility in the Husband to get it, as in Case he has lost his Genitals, &c. or be absent abroad for a considerable

able Time: But if he be within the four Seas, so that by Intendment of Law he may converse with his Wife; if the Wife have a Child, it will not be a Bastard. 1 *Inst.* 244.

A Bastard, after he has *acquired a Name* by Reputation, may, by such reputed Name, make a Purchase to him and his Heirs (tho' his Heirs are limited to his own Off-spring.) A Remainder may be limited to a Bastard, by the Name of Son of the reputed Father, after he is thus known: But a Bastard may not take as *Issue*; nor can he be *Heir* to any, or have any Heirs but of his Body. *Dy.* 374. *Co. Lit.* 3. 8.

But tho' a Bastard may not be Heir, a Man may give or devise all to a Bastard.

Battery.

If any Person Menace another, with a Staff, or Weapon, or if he only *stretch forth his Arm* in Anger, whereby his Intention of Striking is apparent; this is an Assault in Law, tho' never a Stroke be given, and will bear an Action. 22 *Aff. pl.* 60.

But if any one beat or assault me, I may justify the Beating of him: A Man may also beat another in *Defence* of his Goods, Wife, Father, Mother, &c. And a Servant may justify a Battery in Defence of his Master; for all these are but reasonable when a Battery is begun; though they ought not to be done to take Revenge, only repulse the Injury sustain'd. *Brañ.* 9 *E.* 4.

As a Man may not injure another by Battery, or otherwise, so he may not injure himself; because the Life and Members of every Subject, are under

under the King's Protection, to the Intent to serve him.

Beginning.

A Man buys Cattle in a Fair, or Market, which are stoln; and selleth them out of the Market, though the Beasts are afterwards brought in to the Market, and the second Bargain is confirmed by the Person which bought the Cattle, who pays all his Money, and likewise the Toll for the Beasts, the Property is not thereby changed; for the Bargain shall have Relation to the Beginning, which was unlawful. Dy. 99.

Bills.

A blank Indorsement of a Bill, viz. of a Name only, does not only actually transfer the Property of the Bill of Exchange; but the Person to whom it is indorsed, has Power to fill up the Indorsement, by which Means the Indorser may be charged. Salk. Rep. 126.

All Indorsors of Bills are equally liable as the first Drawer: But it is usual, by the Custom amongst Merchants, for the Indorsee to do his utmost to receive the Money of the first Drawer: And if he cannot, then, and not 'till then, the Indorser ought to be chargeable with the Debt.

Acceptance of a Bill will not Charge any Person, unless the Bill be endors'd or underwritten: And on Refusal of Acceptance, &c. Protest is necessary to entitle Costs and Interest. Stat. 3 & 4 Anna.

Bonds.

In *joint* Obligations, the Obligors must be sued together; and if one be sued, he is not obliged to answer, unless the rest are sued also: But in a Bond where several are bound *severally*, the Obligee may either sue all the Obligors together, or all of them apart. *Dy. 310.* If several Days are mentioned for Payment of Money, the Obligation is not Forfeit, nor can it be sued untill all the Days are past; but in some Cases the Obligee may Prosecute for the Money due by the Obligation presently, tho' it be not Forfeit. *Co. Lit. 292.* Executors, &c. are entitled to Money due on a Bond, and not Heirs, by Reason 'tis a Chattel: And where no Place is appointed for Payment of Money, the Obligor is to find out the Obligee, &c. wherever he is, if he be in *England*, and tender the Money. *Dy. 14. 271.*

It is convenient for the Ease of the Obligor that a Place be appointed for the Payment of the Money, otherwise it will be in the Power of the Obligee to give him much Trouble: And the same Care is to be taken as to Time; for if no Day be limited, the Debt is due presently. *Co. Lit.*

And where the Condition of a Bond is made impossible in respect to *Time*, as to pay Money on the 30th of *February*, it shall be paid presently.

If a Condition enjoins an Act to be done at a certain Place; as to go to *Rome*, and there, &c. and the Obligor is to do the *sole* Act, without Limitation of Time, he hath Time during Life to perform it. But if the Concurrence of the Obligor

gor and Obligee be requisite, it may be hastened by Request. *Co. Lit.* 206. 1.

A Man bound in a Bond to go to *Rome* in three Hours, the Condition is *impossible*, and void; and yet the Obligation is said to be good; for all Men ought to be cautious of binding themselves. *Co. Lit. ibid.*

An Obligation made *beyond the Seas*, may be prosecuted by laying the Action here, and alledging that the Bond was made in a certain Place, called, &c. in *France*, in *Islington* in the County of *Middlesex*, and there it shall be tried; for whether there be such a Place in *Islington* or not, is not traversable, so tender is our Law to give Remedy. 2 *Inst.* 261.

If a Man be bound to *appear* at a Day, before Justices, at which Day the Obligee casteth him in Prison, so that he cannot come, the Bond is saved; but it is otherwise if the Obligor were in Prison for his own Act, or if he cast himself in Prison. *Noy. Max.* 13.

Bonds not to use *Trades*, or till or sow Land, &c. are against Law, and void; because these are necessary for the Publick Good: And a Condition of a Bond to do any Act *malum in se*, as to kill a Person, &c. is void.

Blood, Descent, &c.

He that is Inheritable of an Estate, is accounted in Law the *next of Blood*. The next of the worthiest Blood shall always Inherit; as the Males, and all Descendants from them, before the Females; and the Female of the Part of the Father, before the Male or Female of the Part of the Mother: And the elder Brother, and his

Posterity, shall inherit Lands in Fee-simple, before any younger Brother. *Co. Lit.* 14.

None shall have Land in Fee-simple by Descent, unless he be Heir of the *whole Blood*: Lands descending on the *Part of the Father*, the Heirs of the Mother shall not Inherit; and Lands descending on the *Part of the Mother*, the Heirs of the Father shall never Inherit. *1 Inst.* 13. But it is otherwise in case of *Purchase*, which differs from *Descent*; for if a Man purchase Lands, and Die, the same shall be inherited first by the Heirs of the Side of the Father of him who made the Purchase; and if there be none such, then by the Heirs on the Part of the Mother. *Bac.*

Borrowing.

As to Borrowing, if Corn, Wine, or other Thing *that is Perishable*, be borrowed, and suffered to perish, the Borrower shall make them Good; but if a Horse, or other Thing which may be *used and delivered again*, are borrowed, and used in such Manner as they were Lent, if they Perish, the Owner of them shall bear the Loss; unless the Borrower promise to deliver them safe again, in which Case he will be chargeable. *Noy.* 91.

If a Man lends his Horse to another to ride to *Tork*, and he rideth it further; the *Riding further* is not unlawful, nor shall an Action of Trespass be brought upon it. *Finch.* 47. But if this can be prov'd, and the Horse is injur'd thereby, I take it, an Action of the Case may be brought for Damages.

Buildings.

Buildings.

If a Stranger have Lands adjoining to a *new-built* House, he may Build upon his Lands, tho' in carrying up the same he darkens the Windows of his Neighbour's House: But if the House be an *ancient* House that has *Lights*, it will alter the Case; for Prescription will then take Place, and an Action lie for the Injury. *Lev. Rep. 122.*

Burglary.

If a Person enter a House when the *Doors* are open, this may amount to a breaking in Law, from an unlawful Design; but it is no Burglary unless the Door, Window, &c. be actually broken; or the Door be unlocked, or Latch drawn; in which Case it is Burglary, though the felonious Act be *not* executed. *3 Co. Inst. 44. 4. Rep. 39.*

Where Thieves, in the Night-time, finding a Door lock'd, *knock at the Door*, and pretend they come to speak with the Master of the House, whereupon the Servant opens the Door, and they come in and rob the House: And where Persons give out that they are robbed, and on this Pretence make *Hue and Cry*, in Pursuit of which, with a Constable, they demand Entry into a House, and the Owner thereof opens the Doors, whereupon they bind the Constable, and rob the House; these Acts are adjudg'd Burglary, though the House be not broke. *Kel. Rep. 42. 62.*

Entring a House by the Help of a *Key*; coming down a *Chimney* by Night to rob, are Burglary.

glary. And if a Robber set his *Foot* over the Threshold, after a Door is broke open; or put his *Hand, Pistol, &c.* within the Window or Door, it is an Entry. 3 *Inst.*

Certainty.

Leases for Years must have a *certain* Commencement, and Determination; and a Lease may be made good by *Reference to a Certainty*: As if a Lease be made during the *No-*nage of a Person who is fourteen Years of Age, it is a good Lease for seven Years, provided the Minor live so long: If a Man make a Lease of Lands for so many Years as he hath in a Manor, and he hath a Term of ten Years, this is sufficient to pass the Term of ten Years: And if a Person make a Lease to another, for so many Years as the Lessee shall nominate, when the Lessee hath made his Nomination, it will be a good Lease for his Term; but if the Years are left to the Appointment of a Man's Executors, their Nomination after his Death will not be binding. *Plowd.* 273. *Braët.* 6. *Co.* 20.

A Man by Contract may refer the *Price* of a Thing sold, to the Judgment of a *third Person*, who shall reduce it to a Certainty. A Lease for Years of Land, paying so much an Acre, the Rent may be fix'd to a *Certainty*, by Admeasurement of the Acres. If a Man give or Lease *all* his Lands to one, and say nothing further, the Lessee shall have all his Lands in *England*; but if it be express in such a Manor, then it is restrain'd,

strain'd, for the Certainty appears. *Plowd.* 6. 173.

All *Proceedings* at Law are to be *certain* and Affirmative, so that the Defendant may be at a Certainty as to what he should Answer to. *Plowd.* 84.

Certiorari.

Indictments from inferior Courts, and Proceedings of the Quarter-Sessions of the Peace, &c. may be *remov'd* into the Court of *King's-Bench* by *Certiorari*: And this is a common Method in Practice, in order to obtain stricter Justice in Determinations. *Suits* may be also *remov'd* from inferior Courts by *Certiorari*, but the Thing in Demand must exceed 5 *l.* Value: If it be under, Writ of Error, or Attaint, must be brought. Stat. 21 *Jac.* 1.

Chancery.

The Court of *Chancery* relieves Minors, Feme Coverts; and Persons from Frauds, Deceits, and unreasonable Engagements: It *confirms* Titles; *obliges* Performance of Wills, Executors to give Security, Men to account with each other, &c. where there is *no Redress* at Common Law; but Suits in this Court must be for something of the Value of 10 *l.* and upwards (except in Cases of Charity) and for Lands of above 40 *s.* *per Annum.* *Comp. Attorn.* 356.

A Cause cannot be tried by a *Jury* in this Court, when the Parties come to *Issue*, by reason it is a Court of Equity, and not of Common Law; but the Record is to be sent into the *King's Bench*,

Bench, and tried there; though after the Trial is over, it is to be remanded into the *Chancery*, where Judgment is to be given.

No *Subpœna* or *Process*, is to Issue out of the Court of *Chancery*, till a Bill is filed; except in Injunctions to stay Proceedings at Law, &c. See *Coffs.*

Change of Property.

If Writings are put in a Box, this will alter the Property of the Box from being a Chattel, and it shall go to the Heir. *Noy. 7.*

A Man cuts down the Trees of another, and squares them to make Beams for a House, the Person injur'd may seize the same; But if they are once *laid in the Building*, their Nature is then alter'd, and they may not be seized, because they are become a Part of the House, which may not be pull'd down. *Dodd. 143.*

Church.

If a Church *fall down*, it is said the Parishioners are not obliged to rebuild the same: But as they are oblig'd to keep the same in due *Reparation*, this is a Thing that very seldom happens. *2 Vent. 35. 2 Cro. 366.*

A Patron cannot *present* himself to a Church; but he may be admitted by the Ordinary, which answers the End of Presentation. Patrons are to present within six Months next after the Avoidance, or the Right will devolve upon the Bishop by *Lapse*; and if the Bishop do not Present within a further six Months, the Right will descend to the Archbishop; and if he do not

Law Quibbles.

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not present within six Months afterwards, it belongs to the King: But if a Patron presents his Clerk after the six Months, and before the Bishop hath *collated*, his Presentation is good. 1 *Inst.* 135. 2 *Inst.* 273. *Papists* are disabled to present themselves; but they may grant the next Presentations to others.

Parishioners who do not pay to any Church-Rates, have not a *Vote* in Affairs relating to the Church, except the Parson or Vicar. 5 *Rep.* 67.

Combination.

Combinations and Confederacies, to execute unlawful Acts, are punishable *before* the unlawful Act is *perpetrated*: The Law punishes the Conspirators, to prevent the Consequence of the Conspiracy; and 'tis for this Reason that the Commission of *Oyer and Terminer* gives Power to the Judges to enquire of Combinations, Confederacies, &c. 9 *Co.* 57.

Common Pleas.

This Court cannot regularly hold any Plea in Actions Real, Personal, or Mixt, but by Writ out of Chancery, returnable in this Court; unless it be by Bill for or against an Officer, or other privileg'd Person of the Court, &c.

The Common Pleas hath no Cognizance of Pleas of the Crown.

Compulsion.

Compulsion.

If a Man or Woman is compelled for fear of *Imprisonment*, to enter into a *Bond, Deed, &c.* such Compulsion will invalidate the Deed or *Bond*: And if a Person *threaten* another to make a Deed to a third Person, the Deed shall be equally *Void*, as if such third Person had made the *threatning*. *Co. Lit. 253. 2 Co. 9.*

A Man is *Imprison'd* until he makes a *Bond* at *another Place*, and afterwards he does so, when *he is at large*, this is by *Durefs* of *Imprisonment* at the

A Person menaces me to make a *Bond* of 20 *lb* by the *and I tell him that I will not comply with it* but that I will give him *Bond* for 10 *l.* this shall be adjudg'd by *Compulsion*, and *Void*. *Backslum Max. 81.*

A Marriage consummated by *Durefs* is voidable. If a married Woman levies a *Fine* with her Husband, she must be examin'd in *Private*, whether she doth it voluntarily, or by *Compulsion* of her Husband. *Dyer. 359.*

Conditions.

A Man grants to another by Deed, the Office of *Parkership* of a *Park*, or any other Office To hold the same during the Life of the *Grantee*; the *Grantee* hath an Estate in the Office upon *Condition in Law*, that he well and faithfully execute all Things belonging to the Office, and not otherwise; for if he fails in his *Duty*, the *Grantor* may remove him, and *Constitute* another. *Co. Lit. 224.*

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This is a Provision by Law for the Grantor, where there is no exprefs obligatory Covenant, on the Part of the Grantee, for performing the Duty of his Office.

Ec. Tenant by the Curtesy, Tenant in Tail after Possibility of Issue extinct, Tenant in Dower, Life Tenants for Life, or Years, *Ec.* hold their Estates subject to a Condition in Law not to grant the greater Estate than they have, nor to commit Waste, *Ec.* Co. Lit. 233. Vide more, Feoff-
d agents.

When If a Condition annexed to Lands be Possible at the making, and afterwards become Impossible by the Act of God; or if the Condition subsequent in itself be impossible, yet is the Feoffee's Estate absolute; and if the Condition subsequent be *Baculum in se*, or repugnant, it is the same: But it is otherwise in Bonds, for the Condition becoming impossible by the Act of God, of the Law, or of the Obligee, the Obligation is saved; and where the Obligee shall have no Advantage thereof. Co. Lit. 206.

Considerations.

If Tenant for Years Assigns his Estate, no Consideration is necessary; for the Tenure being subject to Payment of Rent, *Ec.* is sufficient to vest the Estate in the Assignee. 1 Mod. 263.

In other Cases, some Consideration must be fully given; as in Bargains and Sales, and Covenants, and stand seized to Uses, there must be a Consideration of Money, *Ec.* if made to a Stranger; and of Natural Affection, Blood, Affinity, Marriage, *Ec.* to a Man's Wife, Children, *Ec.* And tho' the Law allows the Considerations of Marriage,

*Bl. (Con.) says
that you can have no
Consideration in Debt
of Court to stand
seized to the use
that of natural
affection Blood
be so that it*

*follows where leges are to a stranger
e. Con. in Money paid it must be a
some other mode of Conveyance, as
or lease or not let.*

and Blood, to raise Uses; yet doth it not so to trifling Considerations, as old Acquaintance, Schooling, Service, or the like. *Plowd.* 301. *Dyer* 169. 3 *Cro.* 394.

A Bargain and Sale for divers Considerations, is not good without Averment *d'Argent.* *Moor's Rep.* 56. But where a Consideration is necessary, if it be but 5 s. it is said to be as good in Law as if it were 100 l.

Construction.

If a Man retains a Servant, *without* expressing for what Time, the Law construes it to be for a Year, the usual Time directed by Statute. If a Tenant for Life makes a *Lease generally*, by Construction of Law it shall be taken for his *own Life* and not the Life of the Lessee: If Tenant in Tail make such a Lease, it shall also be for the Term of his *own Life*; for otherwise, in both these Cases, it would work a Wrong to him in Reversion: But if Tenant in Fee-Simple grant a Lease of Lands to another, to hold for Term of Life, without mentioning whose Life, it shall be adjudg'd for the Life of the Lessee. *Co. Lit.* 183.

An Estate for a Man's *own Life*, is of a higher Nature than that for the Life of another Person. And if Lands are given, *To hold* to a Man and his Assigns, or to a Man only, and not mentioning for what Time, if *Livery and Seisin* be made, it creates an Estate for the Life of the Donee; but if *no Livery* be had, then it creates only an Estate for the Term of the Grantor, if he be a Lessee, and if he be not a Lessee, only an Estate at Will of the Grantor. *Accomp. Conv.* 31.

Contradiction

Contracts.

Contracts for the Sale of Lands, are to be in Writing : And for the Sale of Goods of 10 l. Value, they will not be binding unless the Buyer actually *Receives* part of the Goods sold, gives something in *Earnest*, or some *Note* thereof be made in Writing, signed by the Parties to be charged by the Contract. Stat. 29. Car. 2. c. 3.

All Sales of Goods are to have a valuable *Consideration* : And a *Shilling*, or a *Penny*, accepted in *Earnest*, will make the Contract binding. If I say I will sell my Horse for 5 l. and another Person standing by says he will give me 5 l. and presently go to telling out the Money, I am debarr'd from selling my Horse to any other ; but if the Buyer doth not pay me presently, it alters the Case. *Noy. Max. 87.*

If a Man agrees for Goods, he may not carry them away *before paid for*, without Leave of the Seller ; as where a future Day of Payment is appointed, &c. See *Property, Merchants.*

Covenants.

If a Man demise Lands to another for a certain Term of Years, the Law intendeth a *Covenant* on the Part of the Lessor, that the Lessee shall quietly enjoy, against all Incumbrances. (But this is understood so long as the Lessee pays his Rent ; for otherwise he may be ejected.) *F. N. B. 145.*

Any one that is Party to a Deed of Covenants may take Advantage thereof ; and an Executor or Administrator may take Advantage of Inherent

Inherent Covenants, although *not named*: If a Man covenant with another to pay him Money at a Day to come, and do not pay to his Executors, &c. If he dies before the Day of Payment, the Executors or Administrators shall be entitled to the Money. *Dyer 112, 271.*

Executors, &c. are also bound by *Inherent Covenants*, such as concern the Thing granted, though they are not nam'd: But if a Man covenant to do any Thing, his *Heir* shall not be bound, unless he is expressly named. *Dyer 257.*

If a Man covenant not to *Revoke a Will*, he may nevertheless do it by Law; but if he enters into an Obligation not to do it, and does it, his Obligation will be forfeited. *Accomp. Cont. 217.*

If a Man covenant to *Serve* me a Year, and I covenant to pay him a Sum of Money, I am obliged to pay him, though he do not serve me; (for he may bring his Action of Covenant) but then I may compel him to serve the Time agreed; But if I covenant to pay him a Sum of Money, if he serves me a Year, it is otherwise. *Co. Lit. 204.*

Costs.

If a Plaintiff *Dismisses* his own *Bill* preferr'd in Chancery, or the Defendant dismisses the same for want of *Prosecution*; or if a *Decree* be obtained in Behalf of the Defendant; in either of these Cases, Costs are allowed to be taxed by a Master. If in a Trial at Law, a Plaintiff makes *Default* in his Appearance, he shall be *Non suited* and the Defendant shall have Costs: In other Cases

Cases Costs are allowed, taxed by the Prothonotary, &c.

If a Defendant fails to make *Answer* by the Day prefixed, or if he do not shew to the Court sufficient Cause of Delay, *Attachment* will be had against him; and on Attachment for Non-appearance, the Defendant must pay 20s. Costs, before he will be discharged; and every succeeding Process double as much. If a first *Answer* be returned *insufficient*, the Defendant must pay 40s. single Costs; the second *Answer insufficient* pays 3 l. Costs; and the third 5 l. And you may have Subpœna both for your Costs, and to make better Answer. A *Replication* may be amended in eight Days, without paying Costs. *Comp. Attorn.* 410.

In Cases of *Injunctions* to stay Proceedings at Law, if on Examination no Matter of Equity be found, the Cause is again *dismiss'd* to the Law, with Costs.

Bills and Proceedings in Chancery ought to be short and succinct, and set forth only the Substance of Deeds, &c. and they are not to contain any Matter *Criminal* or *Scandalous* against the Defendant, &c. If they do, a Defendant may not only refuse to answer, but may recover Costs against the Plaintiff and his Counsel.

Vide more Declaration, Pleading.

Coverture.

A Man must answer for the *Trespases* of his Wife; and if a Feme-Covert Slander any Person, the Husband and Wife may be sued for it. If

Money be received by the Wife, the Husband may be charged for it as his own Receipt; and Action of Debt lies against the Husband for *Goods* delivered or sold to the Wife, for the Law presumes they must come to his Use: But the Wife may not make any *Contract*, without the Consent of the Husband; unless it be for necessary Apparel, Necessaries for her Family, &c. 2 Co. Inst. 713.

A Woman sole indebted takes Husband, whereby she is under Coverture, it is then the Debt of Husband and Wife, and both are to be sued for it; but after the Death of the Wife, the Husband is not liable, unless there be a Judgment obtain'd against them both, during the Marriage. *Pract. Reg.* 105.

A Man during the Coverture, at the Common Law, cannot either in Possession, Reversion or Remainder, *limit an Estate* to his Wife because they are one Person in Law: But by Statute 27 H. 8. A Man may covenant with others to stand seised to the Use of his Wife, or make any other Conveyance to the Use of his Wife; but *not* covenant with his Wife: And a Man may devise Lands by *Will* to his Wife, because the Will hath not Effect 'till after his Death. *Co. Lit.* 112.

If a Husband *abuse* his Wife, as if he threaten to kill her, &c. she may make him find Surety of the Peace. And if during the Coverture, he *Alien her Lands*, she may recover them after his Death by *Cui in vita*. *Co. Lit.*

A Husband possess'd of a Term, in Right of his Wife, cannot devise it by his Will; but in his Life-time he may grant it away, or dispose thereof during the Coverture: And if he make no Disposition thereof, if he survives her, it falls

falls to him, and he may then give it by Will.
Co. Lit. 35.

In case of the Husband's *Banishment*, a Feme Covert may act as lawfully as the Husband might, if he were not dead in Law.

Courts.

The County Court, &c. holds Plea between Party and Party, where the Debt or Damage is under 40s. In Replevin the Sum may be above 40s. And by Writ of *Fussicies* it may hold Plea of any Sum, or of all Actions Personal above 40s. &c.

If a *Freehold* be pleaded by the Defendant, this Court cannot proceed: And nothing shall be intended to be within the *Jurisdiction* of inferior Courts, but what is expressly alledged to be so. If Part of the Cause arise within an inferior Jurisdiction, and Part without, the inferior Court ought not to hold Plea, 1 Lev. 104. 2 Rep. 16.

If the Court of Common Pleas hold Plea in Appeal of Death, &c. and the Defendant is Attaint, it is *Coram non Judice* and void. An Action lies against any Officer, that executes Processes of Courts, which act where they have no *Jurisdiction*; but where a Court has Jurisdiction, and proceeds erroneously, &c. it will be otherwise, 10 Co. 57.

Officers, Marshals, &c. guilty of Extortion for doing their Offices, are to render treble Value, &c. Stat. 3 Ed. 1.

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Debtor

Debtor and Creditor.

WHere there is a Debtor, with a *Surety*, and Creditor, and the principal Debtor and Creditor by Compact, without the Privy of him who is *Surety*, continues the Debt after the Day of Payment, when the *Surety* supposes it to be paid; in this Case, the Court of Chancery will compel the Creditor to take his Relief from the principal Debtor, and discharge the *Surety*.
10 *Jac. Totbil.* 181.

In Debt, the Defendant may plead *Payment* (before Action brought) in Bar; and pending an Action, the Defendant may bring in Principal, Interest, and Costs, and the Court will give Judgment to discharge him. *Stat. 4 & 5 Ann.*

Declarations.

Procedure

Upon a *Latitat* in the *King's Bench*, you may declare against the Defendant in as many Actions as you please; but in the *Common-Pleas*, you must have for every Action *one* Original. And in the *King's Bench*, the Plaintiff hath longer Time to declare than is allowed in the *Common Pleas*, if the Defendant do not *appear in Person*; and then you must declare within three Days after, or the Defendant shall have Costs.

In *C. B.* the Plaintiff had formerly only 'till the last Day of the Term after that wherein the Writ returnable, to *Declare*; but now the Plain-

tiff hath two Terms, after the Return of the Writ, to declare against the Defendant; and if he doth not within that Time declare, Costs shall be allow'd, usually 1 l. 6 s. 8 d. In B. R. if the Plaintiff do not deliver his Declaration before the Rising of the Court the last Day of the second Term, the Defendant may have Judgment and Costs, for not declaring in two Terms. *Pract. Attorn. 66. 146.*

If the Attorney for the Plaintiff do not Declare against the Defendant, upon his Appearance within reasonable Time, the Attorney for the Defendant may enter a Rule against the Plaintiff to declare, and thereupon cause a *Non Prof.* to be enter'd, which being sign'd by the Prothonotary, Costs will be given. When the Plaintiff has declared, the next Term (after Imparance, &c.) his Attorney is to call on the Attorney of the Defendant to answer the Declaration, and if he do not plead in due Time, he is to give him Rule to answer; which done, and the Rule expired, Judgment will be entered by *Nihil dicit.* *Comp. Attorn. 39, 40.*

A Prisoner in Custody may be charged in Prison with a Declaration, and for want of Plea, Judgment may be had against him: But if the Declaration be not entered or left in the Office, before the End of the next Term after the Writ (by which the Prisoner was taken in Custody) is returnable, and Affidavit of it made and filed before the End of twenty Days after such Term, or ten Days, if it be Easter Term, the Prisoner, upon entring his Appearance, shall be discharged by Writ of *Superfedeas.*

The Plaintiff in B. R. may Amend his Declaration in Matter of Form, after General Issue pleaded

pleaded before Entry, *without* paying Costs; but if he amend in *Substance*, he is to pay Costs, or give Imparance: And after a special Plea, tho' he give Imparance, he must pay Costs.

In C. B. any Mistake in a Declaration, the Plaintiff, on giving Notice, may amend it before the *Essoign Day*; and if there be no Notice, and the Defendant hath pleaded or demurred, before Joinder in Demurrer, or taking Issue, the Plaintiff may amend, and force the Defendant to plead presently, on paying 13 s. 4 d. Costs; or give him a further Imparance, without Costs. *Insit. Legal.* 189.

But after Demurrer, or *Issue joined*, and when the *Pleadings* are entered, the Declaration may not be amended, but the Plaintiff is to enter a Discontinuance, and proceed *de novo*.

One may not declare in the Court of *King's Bench*, against a Man that is not either in *Custodia Marescalli*, a privileged Person, or one that hath filed Bail; for no other Way can a Man be said to be present in Court, so as for the Court to take Cognizance of the Matter.

Deeds.

In Deeds, the *Consideration* is a principal Thing to give them Effect. If Land is conveyed to a Man and his Heirs, *without Consideration*, and without expressing any Use or Intent, this is adjudged to the Use of the Person who made the Deed, and he may dispose of it at his Pleasure: But if it be to any certain and just Intent, it may be otherwise; as it will be also if a *Consideration* be paid.

If a Woman, in Consideration of 500*l.* paid her by her Son, by Indenture conveys her Land to him and his Heirs, to the Use of her self for Life, and after of the Heirs of her Son; In this Case the Fee-Simple by Law is in the Son presently, and the Use for Life to the Mother void, because of the Consideration paid: But if there were *no* Consideration, it would be contrary. *Totbil.* 188.

By these two Cases is shewn the Use of Considerations in Deeds; but Proof must be made of the Payment, &c. And all Deeds ought to be *Construed* according to the just Meaning of the Makers: They must have a reasonable *Exposition*, without Injury to the Grantor, to the greatest Advantage of the Grantee. *Plowd.* 160. 161.

If an illiterate Person be to Seal a Deed, he is not obliged to do it, if none be present to read it, and also to expound it, if written in *Latin*: And *Reading a Deed false* will make it void. 2 *Co.* 3.

A Deed may be good without either *Date* or *Conclusion*: But if it be *razed* or interlined by a Stranger in a *material* Part, by this it will be void; tho' this may be help'd by Memorandum on the Back of the Deed. 1 *Roll. Rep.* 40.

A latter Covenant in a Deed may not be pleaded in Bar to a former; as a latter Deed cannot take away the Effect of the *first* Deed. But a Deed by what is subsequent may be sometimes qualified and abridged, tho' not destroyed. *Dy.* 56. 2. *Vent.* 218.

If a *Deed* or Lease that creates an Estate or Term be *lost*, if it can be sufficiently prov'd that there was such a Deed made, and such an Estate

granted and conveyed by it; the Person to whom made, shall not lose his Estate in the Lands. *Pract. Reg.* 198.

The Foundation of Deeds ought to be always just and honest; and where the Words may be employed to some Intent, they will be good. *Vide Fraudulent Deeds.*

Default. *Vide Costs.*

Defeazance.

A Deed of Defeazance will not defeat an Estate in Tail, or for Life, &c. (executed by Livery) unless it be made at the Time of making the Feoffment or other Conveyance, and not afterwards: But *Executory Inheritances*, as Rents, Annuities, Conditions, Warranties, Covenants, Leases for Years, &c. and also Obligations, Recognizances, Statutes, &c. may be defeated after they are created: And these last are most commonly the subject Matter of Defeazances. *Plowd.* 137.

If a Mortgagor of Lands confesses Judgment in Ejectment of all the Lands, &c. and the Judgment is defeazanced on Performance of the Covenants in the Deed of Mortgage, by such Words as are used in Conditions of Bonds, &c. for Performance of Covenants; Upon the Breach of Covenants, you may take out Execution against the Lands, and the Judgment will be good against Leases made after the Judgment: But as to Leases before, you cannot sue out Execution; though the Chancery may oblige such Lessees to attorn Tenants to the Mortgagee. *Instit. Legal.* 255.

Demand.

Demand.

Demand of Rent, in order to *Re-entry* on Lands for a Condition broken, must be upon the Land &c. which is obliged as Debtor; and it must be at the most *notorious Place*, as the Fore-door of a House, &c. for if Demand be made at a Place which is not notorious, as at the Back-door of the House, &c. the same will be void. *Co. Lit. 201.*

An *Action* has been said to be a good Demand of a Debt by Bond or other Specialty after it is due; because the Obligor is bound to tender the Money at the Day, &c.

Demand is necessary to preserve *Claims*, Debts, &c. from being lost by the Statute of Limitations.

Demurrer.

If a Defendant in *C. B.* Demurs to a *Declaration*, it must be under a Serjeant's Hand.

In *Demurrer to Evidence*, where a Plaintiff shews in Evidence Deeds or Writings, &c. upon which a *Question of Law* doth arise, and the Defendant offers to demur upon it, the Plaintiff must join in Demurrer, or wave his Evidence. But if Evidence to prove a Fact is given for the King in any Suit, or on Information, &c. and the Defendant offers to demur upon it, the King's Counsel are *not obliged* to join in Demurrer; but the Court ought to direct the Jury to find the special Matter. 5 *Rep. 104.*

Both the Plaintiff and Defendant may Demur upon Evidence produced to prove a Fact upon which a Matter of Law arises. 2 *Inst.* 426. In Criminal Cases, if the Criminal *joins Issue* upon a Point of Law in an Indictment, allowing the Fact to be true as laid in the Indictment, which is *Demurrer*; if the Indictment be allowed to be good in Law by the Opinion of the Judges, they proceed to Judgment and Execution, as if the Party had been convicted by Confession or Verdict. So that a Person indicted at Sessions ought to be careful how he joins Issue upon a Point of Law.

By the *Stat.* 4 and 5 *Ann.* For *Amendment of the Law*, the *Causes* of Demurrer are to be specially *set down*; or the Judges to give Judgment, without regarding Imperfections in Writs, &c.

Descent. Vide Blood.

Detainer.

Tho' for *Detinue* Action may be brought, yet in Contracts a Man may detain his Goods sold, 'till he is paid for the same: Inn-keepers, Taylors, or other Artificers, may detain the Horse, Robe, &c. until *reasonable* Satisfaction be made. *Dyer* 30. And others may detain Goods, &c. of Debtors, 'till the Debt is satisfy'd.

If a Lessor covenant to repair the House, but do not, the Lessee may do it and *withhold* as much of the Rent as will pay himself. *Stat.* 12. *H.* 8.

Disseisin.

Disseisin.

When any Man wrongfully enters on the Possession of another, and puts out the right Owner of the Freehold and Inheritance, he thereby gets the Freehold and Inheritance by Disseisin; and if such Disseisor (having peaceable Possession five Years) continue in Possession, and lie seised, whereby the Lands descend to his Heirs, they have a Right to the Possession 'till the Person that hath Right recovers; and if no Suit be prosecuted within sixty Years after the Disseisin, the right Owner will lose his Estate for ever. *Bac. Elem.*

If a Man oblige another to swear to surrender his Estate unto him, and he do so, this amounts to a Disseisin. To disturb one from manuring of his Land, is a Disseisin of the Land it self: And to turn a Stream running to a Mill, is a Disseisin of the Mill it self. *Co. Lit. 161.*

Distress.

A Distress ought always to be made of such Things whereof the Sheriff may make Replevin, and deliver again in as good Case as they were at the time of the taking. And if the Rent be not paid, or the Distress replevied, within the Space of five Days, the Goods are to be apprais'd and sold for Payment thereof.

An Horse in an Inn, Sacks of Corn in a Mill, Market, &c. Materials in a Weaver's Shop for making of Cloth, another Man's Garment in the House

House of a Taylor, &c. may not be distrain'd, for they belong to others, and are for the Good of the Publick: And a Man may not be distrain'd of the Instruments of his Trade or Profession; nor may Cattle of the Plough, Books of a Scholar, &c. be distrain'd, when other Goods may be taken. *Co. Lit.* 47. In a Town where Goods may be attached for Debt, a Horse may be seized; but I take it the Rider must be off from it, otherwise it may be an Assault on the Highway.

When a Distress is taken, it is to be carried to the common Pound, or to be kept in an open Place; but in the last Case, Notice is to be given to the Owner of it, of the Taking, and the Place where it is, that if the Distress be a Beast he may give it Food; and then if the Beast dies for want of Food, the Owner shall bear the Loss, and the Party distraining may take another Distress for his Rent or Duty. But it will be otherwise, if no Notice be given. *1 Inst.* 47. 96.

Distresses are to be reasonable; and ought not to be taken in the Highway; or driven out of the Hundred, except of Cattle, to a Pound overt in the same County, &c. under the Penalty of 5 *l.* and treble Damages. But if a Lord come to distrain, and see the Cattle within his Fee, and the Tenant, to prevent the Lord from Distraining, drives the Cattle into the Highway, the Lord may follow and distrain the Cattle, and the Tenant cannot make Rescous: But if the Lord had not the view of the Cattle, it is otherwise. *Co. Lit.* 161. *2 Inst.* 131. &c. Persons distraining others, or purpose to Injure them, shall pay treble Damages; (Rescous and Pound Breaches incur

also

also treble Damages) and where a Distress is taken, and no Rent is due, double the Value of the Goods, and full Costs, may be recovered. Stat. 51 H. 3. 13 Ed. 1. 1 Ph. & M. 2 W. & M.

A Tenant may not lawfully remove Goods from his House, &c. before his Rent be paid, without Licence from the Landlord. And if they are fraudulently convey'd away, they may be seized in five Days, wheresoever found, &c. Stat. 8 Ann.

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says in 30 days

Divorce.

Upon a Divorce, the Woman shall have the Goods given with her in Marriage, not being *dot*; for the Goods were given in Advance-ment of the Woman, and therefore it is reasonable that she should have them. Dyer 13.

Divorce is a Dissolution of Marriage; and if a Woman be divorced *a Mensa & Thoro*, the Cause not being for Elopement or Adultery, she may sue the Husband for *Alimony*, or Maintenance out of his Estate, either in the Chancery or Spi-ritual Courts, and Recover; but if the Cause of Divorce proceed from Adultery, or Elopement, it will not be allowed.

Issue after a Divorce, are reputed Bastards.

Dower.

If a *Jointure* be made of Lands to the Wife, before Marriage, she cannot wave it and claim her Dower; but if the Jointure be made after the Marriage, she may refuse the Lands appointed

ed her in Jointure, and have her Dower. *1 Inst.* 36.

If a Wife be *evicted* of her Jointure, she shall be endow'd according to the Rate of her Husband's Lands, whereof she was Dowable; and if the Husband *alien* his Lands, yet the Wife shall be endow'd of her third Part, unless she debars herself by her own Act, as by levying a Fine &c. But the Husband must be sole seized, for in Case of Jointenancy, Survivorship will take Place before Dower. *Co. Lit.* 31.

If a Wife commit any Crime, as Treason, Feloyny, &c. or Elope from her Husband, and live with the Adulterer, without being reconcil'd to her Husband, she shall *Forfeit* her Dower; and if a Husband commit Treason, the Wife shall not be endow'd: But the Treason of the Husband will not work the Forfeiture of a Jointure; because this is usually made in Consideration of Marriage Fortune. *2 Inst.* 435.

Election.

A Man devises to one Man 20*l.* to another 20*l.* and to a third Person a like Sum, and maketh his Executor, and dies, having Goods only, his Debts being paid, to the Value of 20*l.* Now it is in the Election of the Executor to pay the 20*l.* to *which* of the Legatees he thinks fit, and the others have no Remedy; and if one of the Three be made Executor, he may retain the Legacy to himself. *Co. Lit.* But yet it is but just

It is just and equitable that the 20 l. should be *distrib-*
uted amongst them, as the Testator intended
 that them equal Benefit from his Estate; or that the
 Heir first named should be preferr'd.

Entry.

In Cases of *Descent*, Entry of the Heir seems
 to be necessary on the Death of the Ancestor,
 to entitle him to the Rents and Profits of
 the Land: Lands may be recovered by *Writ of*
Entry. An Estate of Freehold will not cease
 without Entry or Claim; and where a Man will
 make Advantage of a Condition, he must *Enter*,
 and when he cannot Enter he must make his
Claim. *Co. Lit.* 218. If a Man dare not Enter
 for fear of Death, he is to go as near as he can
 to the Lands and make his Claim, &c. and it
 will be good.

Entry must be in a peaceable Manner; for tho'
 a Man have Title of Entry, he may not enter
 by Force, on pain of Imprisonment, &c. Re-
 course must be had to the Law. And a Man
 may gain Possession by Entry, when he has Right
 of Entry, and the same is not taken away by
 Law, *viz.* by Descent or Discontinuance: By *De-*
scend, where a Disseisor *dieth seized*, and the Law
 casteth the Lands upon the Heir; by *Discontinu-*
ance, where Alienation is made of Lands by Te-
 nant in Tail, &c. In which Cases the Persons
 having Title, and the Issue in Tail, &c. have
 no Right of Entry, but are driven to their Action.
Inst. 237. 1 *Roll.* 632.

A Man having divers Children, and the El-
 dest being a *Bastard* Enters into the Land, and
 enjoys

enjoys it quietly during his Life; if he dies seized, his Heirs shall hold the Land against the lawful Children. If an *eldest Son*, having issue die, and after his Decease, the *youngest Son*, &c. *Enters*, and many Descents are cast in his Line yet may the Heirs of the eldest Son make an Entry on the Lands; But if the youngest Son convey away the same by Feoffment in Fee, and the Feoffee dies seized, it will be otherwise; because then the Privy of Blood of the eldest Son is determin'd. *Co. Lit.* 244.

If a *Lease* be made for Years on Condition That upon such a Contingency it shall be void in this Case, so soon as the Thing doth happen the Lease is void *ipso facto*, without any Re-entry, &c. But if a Lease be made for *Life* upon such Condition, the Lessor must Enter, &c. before the Lease will be void. 3 *Rep.* 65.

Tenant for *Term of Years* may enter when he will, the Death of the Lessor is no Let, and he may grant away his Term before it begins: But before he Enters he cannot surrender, nor have any Action of Trespass, nor take a Release. *Nov. Max.* 30.

As to Entries in other Cases, the Law allows a Man Power to enter a *Tavern*; a *Landlord* to enter to view Repairs, and take *Distresses*; a *Commoner* to enter Lands to see his *Beasts*, &c. But if he that enters a *Tavern*, commits a *Trespass*; or if he that enters to view Waste, breaketh the House; or the *Commoner* cut down Trees; the Law will Judge it that they entered for that Purpose. 8 *Co.* 146.

Entry and Claims on Fines. Vide *Fines*.

Error

Error.

After Judgment had by *non sum Informatus*, Confession, or otherwise, in any Cause the Judgment may be *revers'd* by Writ of Error, if there be any material *Variance* between the Additions in the Original Writ, or the Process of *Capias, Alias, Pluries, &c.* if the Writ be not duly return'd and filed, with the *Custos Brevium*; if there be not Warrants of Attorney duly filled, and put into the Office as the Cause requires; if the Debt demanded in the Process, and the Debt in the Judgment recover'd do not agree, &c. which are Causes of Error.

Upon a Writ of Error brought upon a Judgment had in the Common Pleas, and return'd into the King's Bench, the *Proceedings* thereof must be only in the King's Bench: A Writ of Error upon a Judgment had in the King's Bench, in Actions of Debt, Case, Trespass, &c. must be returnable in the Exchequer Chamber; and the Cause of Error heard and determin'd before the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the rest of the Judges and Barons who are of the Coif of those two Courts; and if the Error be *found* and allow'd by them, then the Judgment is *reversed*; but if it be *not found* to be good, the former Judgment is *affirm'd*, and Costs and Execution awarded to the former Plaintiff: And though there be a Reversal of the Judgment, the Plaintiff may commence a *new Action* against the Defendant for the same Cause, if he think fit. *Comp. Attorn.* 6, 67.

If

If Judgment on *Bill, &c.* in *B. R.* shall be affirmed on Error in the Exchequer Chamber, yet a Writ of Error may be brought thereupon, returnable in *Parliament*; to the great Delay and Vexation of the Plaintiff: But if, where the Debt is Considerable, &c. the Proceeding is by *Original*, then no Writ of Error lies to the Exchequer Chamber, but only returnable in *Parliament*. *Instit. Legal.* 141.

An *Outlawry* may be reversed, where the County Days are *mistaken*; where sufficient Time is not allow'd between any of them; the Person is misnam'd; the Sheriff's Name omitted, or mistaken; by Words which bear no Signification by any Error to be found in the Return of the Proclamation, or for want of filing the Proclamation; want of Returns, and Mistakes in the original *Capias, Alias, &c.* And Error in the Case is either to be allow'd or disallow'd by one of the Judges of the Court.

Escape.

A Person which suffers a *wilful* Escape, is liable to be punish'd for the same Crime for which the Party escaping stood committed; but if a Man receives a Felon, and suffers him to get away *before Apprehension*, this is no Escape. *Gallers* suffering Felons *wilfully* to Escape is Felony, and for a *negligent* Escape they are Fineable. And to Bail one not bailable by Law, is a negligent Escape. 3 *Rep. Plowd.* 476.

Estate

Estates.

If an Estate be granted to a Man, To hold to him *for ever*, or to him and his Assigns *for ever*, this makes but an Estate for *Life*, for want of the Word *Heirs*; for a *Fee Simple* Estate, must be made to a Man and his *Heirs for ever*. And if one gives Lands to a Man and his *Issue*, or Children, without the Words his *Heirs*, to convey the Inheritance, he has but an Estate for *Life*: But in Case of a Will, it may be otherwise. *Co. Lit. 20.*

An Estate for one *Thousand Years* is not a Freehold, or of so high a Nature, in Construction of Law, as an Estate for *Life*. *1 Inst. 6.* If any Person or Persons, for whose Life or Lives any *Estates* have been granted, are *absent* above seven Years, and no Proof is made of their being Living, they are to be accounted naturally Dead: And those in Remainder, &c. may move the Lord Chancellor, once a Year, to order Persons to be produc'd on Affidavit, that there is Cause to believe that the Tenant for Life is Dead, &c. See Statutes 19 *Car. 2.* & 6 *Anna.*

Estate Tail.

All Lands of Inheritance may be Entail'd; but if an Inheritance be *Personal*, or exercis'd with Chattels, it cannot be Entail'd. An Annuity granted to a Man, and the Heirs of his Body, will be void: And a *Lease for Years* to a Man, and the Heirs of his Body, is void; for the

E Chattel

Chattel cannot be turn'd into an Inheritance : But it may be assign'd in Trust for the Issue in Tail to receive the Profits, which is in Effect an Estate Tail. 10 Rep. 87. 4 Inst.

An Estate of *Fee-Tail General*, is where Lands are given to a Man, and the Heirs of his Body ; or to a Woman, and the Heirs of her Body : And *Fee-Tail Special*, is where Lands are granted to a Man and his Wife, &c. and the Heirs of their two Bodies ; so that it is certainly set down of whom the Issue shall proceed. A General Tail will frustrate a Special Tail, created at one and the same Time. And a Gift to Heirs Male, &c. without limiting of what Body, is a Fee-Simple. Co. Lit. 26, 27, 28.

A Tenant in Tail cannot lawfully grant a greater Estate than for his own Life ; nor make *Leases* otherwise than for twenty one Years, or three Lives, reserving the accustom'd Rents, &c. according to the Statute 32 H. 8. But 'tis incident to his Estate to be dispunishable of Waste ; and a *Condition to Restrain* him from Levying a Fine, or Suffering a Recovery, to bar his Issue, (which are incident to his Estate) is void : But a Gift in Tail may be upon Condition, That the Tenant in Tail shall not *Alien*, &c. 10 Rep. 39.

Leases made by Tenant in Tail, having all the Conditions required by the Stat. 32 H. 8. will bind the Tenant in Tail himself, and the Issue in Tail also ; but if Tenant in Tail die without Issue, (whether the Leases are warranted or not by the Statute) they are void as to him in *Reversion* or *Remainder*. Accompl. Conv. 160.

vidence.

Evidence.

An Alien Infidel; one *non Sana Memoria*; a Party interested in the Suit; a Wife for or against her Husband, (unless it be in Cases of Treason) Persons attainted of false Verdict, convicted of Perjury, or Subornation; of Forgery; that have stood in the Pillory, &c. and Persons Convicted of Præmunire and Felony, not Pardon'd, are *excluded* by Law from being Evidence in any Cause.

But a Jew (who may be Sworn on the Old Testament) Kinsmen, though never so near allied; Tenants, Servants, Masters, &c. and others not Infamous, or as are not Parties in Interest, will be *good Evidence*: But the Credit of Witnesses, in Case of Servants, &c. shall be left to the Jury: An Attorney may not be examin'd against his Client. 1 Inst. 6. 4 Inst. 279.

A Man is not allow'd, in Civil Cases, to be an Evidence in his *own Cause*. Co. Lit. 6. Deeds may be given in Evidence; and so may Shop-Books, &c. See Stat. 7 Jac. 1.

See more, *Witnesses*.

Exception.

A Bill of *Exception* is allow'd to Evidence, when the Court does not agree to a Demurrer for Insufficiency of the Evidence: But in Criminal Cases, this Privilege of Exception by Bill to the Evidence ceaseth. And Exceptions may be made

to a *Juror*, where one of the Parties is of Affinity to him, is his Master, or he hath any Interest in the Thing demanded; if the Juror hath given a Verdict before in the same Cause; or if after he is return'd, he Eats and Drinks at the Charge of either Party; if the Juror is convicted of Felony, Perjury, &c. which is call'd *Challenge*: But in Criminal Cases, for compassing to kill the King, &c. Challenge will not be allow'd but for Malice. *Co. Lit.* 155. Exception to *Indictments*, &c. must be before Evidence is given in Court. Stat. 7 W. 3.

Exceptions may be taken to an *Answer in Chancery* for Insufficiency, and the Matter referr'd to a Master, who is to Report whether it be Insufficient or not; to which Report Exceptions may be also made.

These last Exceptions oftentimes tend to the *delaying* of Suits, and equitable Proceedings.

Exchanges.

In Exchanges, the *Estates* and *Interests* mutually granted must be *Equal*; but it is *not* necessary that the *Value* or *Quantity* of Lands should be *Equal*. There needs no Transmutation of the Possession, and therefore a Release of Rent, &c. in Fee, for Land in Fee, will be good: But Annuities may not be exchange'd for Lands. *Co. Lit.* 50.

Lands in Fee, for Life, or Years, may be exchange'd, so long as the Estate in the Lands be the same on both Sides; but if a Fee-Simple be exchange'd, for a Fee-Tail, &c. the Exchange

is void, or at least voidable by a Man's Issue, &c. *Lit. Sect. 22.*

A Man gives three Acres of Land in Exchange for three other Acres, and he is *evicted* of one Acre; in this Case all the Exchange is defeated, and he may make an Entry on his own Lands; for there is a *Condition of Re-entry* tacitly annexed to this Deed, if either of the Parties are put out of Possession, 4 *Rep. 121.*

In all Exchanges there must be *Execution* of them by *Entry*, in the Life of the Parties; so that if one of them dies before the Exchange is executed by Entry, the Exchange is void. *Co. Lit. 50.*

Exchequer.

The Plaintiff, in Causes prosecuted in the Exchequer, ought to be a *Tenant*, or Debtor to the *King*, or some way Accountant to him: And the Proceedings of the Court of Equity, in the Exchequer, are agreeable to the High Court of Chancery; but the Plaintiff must set forth that he is Debtor to the King; tho' whether he be so or not, is not material.

In this Court our Clergy generally exhibit Bills for Recovery of their *Tytbes*.

Excuse.

Ambassadors are *excused* of Practises against the State where they Reside, *unless* it be in Case of *Conspiracy*; which is contrary to the Laws of Nations. *Bac. Max. 26.*

If a *Felony* be committed by a Man and his Wife, the *Wife* shall be *excused* on Account of her Obedience and Subjection to her Husband; the Law will suppose that she acted by the Command of her Husband; but if they join in committing *Treason*, which is against the Common Wealth, the Obedience of the Wife will *not Excuse* her: And if she *alone* steal Goods, &c. without the Husband, this is *Felony* in the Wife. 13 H. 8. 3 Inst. 310.

If a Person *Kill* another, meerly in his own Defence, he will be *excused* for the same.

Executions.

Goods of a Stranger, or Goods *pawn'd*, in the Possession of the Defendant; Things annex'd to the Freehold; Goods bought *Bona fide* depending the Action, shall *not be subject* to Execution: And if Chattels are sufficient to pay the Debt, Lands ought not to be extended. 2 Inst. 472, &c.

Sheriffs may sell *Terms* of Years for Debt, by Writ of Execution; but Leases for *Life* are not saleable for Debt; tho' the Sheriff may extend the yearly Profits. If you sue forth a Writ of *Fieri Facias* against the Defendant's Goods, and Levy Part of the Debt, but not the Whole, you may afterwards have a *Capias ad Satisfaciend'* against his Body, or an *Elegit* for the rest: But if you first *Imprison* the Defendant on a *Capias ad Satisfaciend'*, then you cannot have a *Fieri Facias* against the Goods, or an *Elegit*, whilst the Defendant continues in Execution; (but if he die, you may have either of them.) And after an

Elegit

Elegit executed and filed, you can have no other Execution. *Comp. Attorn.* 47.

In Case a *Judgment* have continu'd *above* a Year and a Day, and no Execution taken out there-upon, the Party Recovering, must renew it by *Scire Facias*, unless he hath sued forth Process from Term to Term, and filed the same, which will warrant an Execution after a Year and a Day; and in Case of the Death of either Plaintiff or Defendant, the Judgment must be reviv'd by *Scire Facias*.

If a Defendant be *outlaw'd* after Judgment, and he cannot be arrested within a Year and a Day, the Plaintiff is *not* oblig'd to renew the Judgment, &c. by *Scire Facias*; but in other Cases it is otherwise.

Executors are not liable to Execution for the Testator; but if there be any Freehold, it may be taken on the *Heir*. One Year's *Rent* is to be paid to a *Landlord*, where his Tenants Goods are taken in Execution, before the Removal of the same. See Stat. 8 *Anna*.

Executors.

If a Man accepts an Executorship, and *pays* any *Debts* before those of a Higher Nature, he is liable to the Payment of the others, though out of his own Estate: And *taking* any of the *Goods* of the deceased, will make a Man Executor in his own Wrong, and liable to *Debts*; for *Caveat Actor*. *Plowd.* 543.

The Executor is to pay all the *Debts* of the Testator, before any *Legacies*: And the *Debts* are to be *paid* in the Order following; first, *Debts* to

the King, Debts on Judgments, Statutes, &c. Then Debts on Mortgages, Bonds, and other Specialties; and then Rent is to be paid, Servants Wages, Debts on Shop-Books, &c. This the Executor must observe at his Peril.

Any Thing given by Way of *Legacy*, may be sold for Payment of the Debts, if there be not enough otherwise to pay all the Debts: And Executors, &c. have as *Assets*, Chattels Real and Personal, Leases for Years, Rents, Corn cut and growing, Grass cut and sever'd, Trees cut, Cattle, Money, Plate, Household-stuff, &c. Debts, Judgments, Statutes, Obligations, &c. But not Lands, Freehold, Grass and Trees growing, Incidents of a House, as Doors, Wainscot, &c. Pales, Walls, Fish-ponds, Deer, Conies, &c. for these belong to the Heir. *Co. Lit.* 209. *Plowd.* 293. *Dyer* 575.

All Executors are esteem'd in Law but as one Person; therefore Payment of a Debt to one of them, is good to all; and Possession of one of them, of the Goods of the deceased, is the Possession of all: But if you sue Executors for a Debt, all must be sued. Sale of Goods, &c. of one of them, is good against and will bind them all; for one cannot be sued by the other, unless it be in Case of Covin, &c. *Dyer* 210. *Plowd.* 343.

Debts first prosecuted shall be first paid by Executors, though they are but in equal Degree with others; in other Cases, Priority of Time when Due may take Place; and Debts of a higher Nature may be paid in the whole, though there be nothing remaining to pay the smaller Debts.

It is good and safe to be early in prosecuting Executors for the Debt of the Testator; but where

where the Testator might *Wage* his *Law*, no Action will lie against the Executor.

Executors have the Advantage of *Inherent Covenants*, as for Payment of Money, &c. though they are not named.

Vide *Covenant, &c.*

Extinguishment.

If a Person has a *Rent Charge* issuing out of *Twenty Acres* of Land, and Releases all his Right in *One Acre*, this shall Extinguish all the *Rent Charge*: But if a Man make a *Lease* of Lands for Term of Life, rendring *Rent*, and after he Releases Part of the *Rent*, this will be good, and the Residue of the *Rent* not be Extinct. *Br. Releas. 85.*

Where there is a *Rent Charge*, Common of Pasture, or any Profit issuing out of Land, and he that hath it doth Release to me; this Release will Extinguish the *Rent, &c.* if I am seized of the Land: But if I have only a *bare Right*, it is void. *Co. Lit. 305.*

If Money due on a Recognizance, be paid in Part to the Conusee, if the Conusee give a Release that mentions not the Recognizance, it shall Release so much as is paid only: But if it mentions the Recognizance, it will be otherwise. For the Recognizance is *Entire*, and being destroy'd in Part, is destroy'd in the whole. *Sheph. Touch. 248. Instit. Legal. 420.*

Extortion, See Courts.

Frauds,

Frauds, and Fraudulent Deeds.

OUR Laws are design'd for the Advancement of Truth, and Suppression of Fraud And Acts, as well Judicial as others, which themselves are *Just and Lawful*, being mix'd with *Fraud and Deceit*, may in Judgment of Law be censur'd as Injurious and Unlawful; so that Care should be taken to avoid this Mixture 3 Co. 78.

Deeds of *Gift, Grants, &c.* made with Intent to defeat Creditors of their just Debts, are void as to and against such Creditors, &c. And Gifts made in Secret, are liable to Suspicion of Fraud. All Grants, Conveyances, Limitations of Use &c. made of Lands or Tenements, to Defraud any Purchaser of the same for valuable Consideration, as against such Purchaser, and all Persons claiming under him, shall be void. Persons putting such Grants, &c. in Use as good, are to forfeit a Year's Value of Lands, and the whole Value of their Goods and Chattels, and be also imprisoned: Where Lands are convey'd with Clause of *Revocation, &c.* and afterwards Sold for a valuable Consideration, the first Conveyance shall be void against the Purchaser; (but this is not to extend to Mortgages made *bona fide*.) And *Devises* of Lands, Rents, &c. are deem'd fraudulent and void against Creditors upon Bonds. or other Specialties, &c. Stat. 13 & 27 Eliz. 3 & W. & M. &c.

If a Man make an *Assignment* of his Lease, and
 it keeps Possession of the Lands, the Deed of As-
 signment will be adjudg'd Fraudulent. A *Presen-*
tion obtain'd by Fraud, is void: Letters of
Administration procur'd by Fraud, are likewise
 void: And Sale of Goods, although it be in the
 open Market, if it be by Fraud, will not be
 binding. 1 Vent. 329, F. N. B. 98. These are
 serious Laws; but nevertheless our designing
 Men, find out Ways to evade them; for though
 Money may be prov'd to be paid as a valuable
 Consideration for Lands or Goods, it is not easy
 to prove it return'd, or to prove the *real Intention*
 of the Parties, &c.

The Chancery indeed Relieves Frauds and De-
 ceits, where no Remedy is to be found at Law;
 but how will they be always discovered to obtain
 their Relief? A Conveyance is made to Friends in
 Trust, to the Use of a Man's own Children, with
 Remainder over, &c. the Court of Chancery
 may at least enable, if not compel the Feoffor
 to sell Part of the Lands, to pay his Debts. And
 if a Man conveys his Lands to Friends in Trust,
 and afterwards sells the Inheritance, the Trust
 in Equity shall go to the Purchaser. Totbil 43,

Persons making fraudulent Conveyances to
 multiply Votes at *Elections* of Members to Par-
 liament, are to be taken against the Persons,
 making them free and absolute, &c. Stat. 10
 Geo. 1.

Feoffments.

Feoffments.

A Man makes a *Feoffment*, or other Conveyance, of Lands in Fee, upon Condition the Feoffee shall *not take the Profits*, this Condition contrary to Law, and *Repugnant*; and the Estate Absolute: But yet a *Bond* with Condition that the Feoffee shall not take the Profits, may be good. *Co. Lit.* 206.

A Man seized in Fee may make a *Lease* for Life or Years, with Condition not to *Alien* during the Term, and it will be good; but in a *Feoffment* in Fee, &c. such a Condition will be void; (as it will be where a Sale is made of Chattel, of all a Man's Interest.) A *Feoffment* upon Condition that the Feoffee shall not *Alien* is void, because the Law gives a Power to Tenant in Fee to *Alien* to whom he pleases; but it is otherwise in Case of Tenants in Tail. *H. Rep.* 261.

A *Feoffment*, in some Respects, has been held to *Excel* the Conveyance by *Fine and Recovery*, for it clearth all *Disseisins*, *Abatements*, *Intrusions* &c. but no *Feoffment* can be made of such Things whereof *Livery of Seisin* cannot be made, as *Rent*, *Reversions*, &c. *Co. Lit.* 5, 9, 49, &c.

This was the usual Conveyance at Common Law, but of late the Conveyance by *Lease and Release* is generally made Use of in its stead.

Fines and Recoveries.

A *Fine* Bars only *Heirs in Tail*, and not *Remainders* or *Reversions*; but a *Recovery* bars them all.

A Fine may be levied of all Things *in esse* *tempore Finis*: But no Fine bars any Estate in Possession or Reversion, not turn'd to a Right; and he that at the Time of the Fine levied had not any Title to Enter, but meerly a *future Interest*, shall not be barr'd by a Fine, and *Non Claim*, until five Years after its coming *in esse*. Strangers to Fines, such as are not Parties or Privies, have *five Years* to enter and claim their Right, &c. as have likewise Infants after they come of Age, feme-Coverts after their Husband's Deaths. Prisoners after their Enlargement, &c. But Privies in Blood, as Heirs of the Cognizors, claiming by the same Title as their Ancestors, are *barred presently*. *Plowd. 367. Raym. 151.* On Entries made to avoid Fines, Action must be prosecuted in one Year after, or they shall not avoid a Fine with Proclamations, &c. 4 & 5 *Anna.*

If either of the Parties to a Fine die, after the Cognizance, and before the King's Silver is enter'd, it will avoid the Fine, and it cannot be made good; but if the King's Silver be enter'd, and the Party die after this, the Fine shall be finished; for it is then accounted a Fine in Law. *2. Lit. 9. Dyer 220.*

Lands bought by several Purchasers, and of several Persons, may pass in one *joint Fine*; which is sometimes done to save Expences, where Estates are small. And Fines are of divers Kinds, single or double, either with Proclamations, or without; but a Fine with Proclamations (according to the Statute) is the best sort of Fine, and most used in Practice. 2 *Inst. 219.*

A common Recovery is *Fictio Juris*, a formal Act by Consent, used where a Man is desirous to cut off an Estate Tail, Remainders, &c. It is much favour'd by the Law, and supposes a Re-compence

compence in Value to all Persons that lost the Estate. But I am against all *Supposition* and *Fiction* in our Law; which I think disgraces it.

Felony.

If a Man hath the *Possession* of Goods once lawfully, tho' he afterwards carries them away with an ill Intention, it is not Felony. A *Taylor* receives Cloth from another to make a Suit of Cloaths, and then *imbezils* it, is not guilty of Felony: Neither is a *Carrier* who has Goods delivered him to carry to a certain Place; unless he opens the Pack, and takes away Part of the Goods, or carries them to a wrong Place, which shews a Design of stealing them: But if a *Shopkeeper* deliver Goods to one who pretends to buy them, and he *runneth away* with them, this will be Felony, because the Goods were not fairly out of Possession of the Owner, without compleating the Contract. 3 *Inst.* 107. *Kel.* 82.

If a Man make use of a *Process* at Law to obtain Goods, where he hath no Property, and the Goods are delivered to him, this is a Felonious taking; so is also the getting Goods out of a House upon an *Ejectment*, where a Man hath no Title. *Sid.* 254.

Stealing Winding-Sheets from dead Persons is Felony: and all *Thefts* are either Felony or Larceny; but a *Feme Covert* cannot steal her Husband's Goods; tho' if she deliver the Goods of her Husband to an Adulterer, and he goes away with them, this will be Felony in him. A Husband receiving his Wife may be *Accessory* to a Felony: but if the Wife receives her Husband, she will

not be Accessary; for she is not bound to discover the Offence of her Husband. 3 Inst. 108, 310.

If a Felony ensue of another Nature than what was advis'd, the Adviser shall nevertheless be Accessary. Dalt. 396.

Forbearance.

If a Man grant to another Common for ten Beasts yearly in a Common; or ten Loads of Wood out of such a Coppice, to be taken yearly for three Years; though the Grantee forbears to enjoy this Common, or to take his Allowance of Wood for two Years, he may not have Common for the thirty Beasts, or have thirty Loads of Wood the third Year: And if a Man grant *Esfovers* to be spent in such a House, notwithstanding the Grantee burns his own Fuel therein, yet he can demand no Allowance, for that he took them not. Bac. Max. 23.

Forfeiture of Estate.

Tenants in Tail after Possibility of Issue extinct, Tenants by the Curtesy, or for Life, &c. suffering a Recovery by Covin, without the Assent, and to the Prejudice of him in Remainder or Reversion, such Recoveries are void, and are Forfeitures of the Estates of such Tenants: If they alienate their Estates in Fee, it is likewise a Forfeiture to him in Remainder or Reversion. A Copyhold Tenant refusing to do Suit of Court, or to pay his Rent to the Lord when demanded on the land; committing Waste upon his Copyhold; or

or making a Lease for longer Time than a Year, &c. without Licence, are Forfeitures of his Estate: But a Copyholder for Life may surrender to another in Fee, and be no Forfeiture of his Estate; for it passeth to the Lord by the Surrender, and not by Livery. *Co. Lit.* 63. 1 *Co.* 22.

Persons committing *Treason, Felony, &c.* incur Forfeiture of Estate: But *collateral Blood* may inherit, notwithstanding Attainder; though the *lineal Blood* is corrupted and cannot. A *Felo de se* forfeits his Goods and Chattels.

Forma Pauperis.

Every poor Person having Cause of *Action*, shall have original Writs and Subpœna's *Gratis*; - and the Judges of the Court, where the Suit is depending, shall assign him *Counsel* and an *Attorney* who are required to dispatch his Business without Fees. *Stat.* 11 *H.* 7.

If a *Pauper* is nonsuited, or overthrown on Trial, &c. he shall not pay Costs, but be punished as the Judge shall think fit. *Stat.* 23. *H.* 8.

Gifts.

IF a Man say to another, Here, I give you my Ring, with the Ruby, &c. and deliver it with his own Hand; this will be a good Gift, though the Ring bear a Diamond, or any other Jewel and not a Ruby. And if a Man give a Horse to A. B. being present, and say unto him, A. C. take

his Horse; it will be a good Gift, although he is called by a wrong Name; but it would be otherwise, if the Horse were delivered for *the Use* of A. C. where A. B. was meant by the Giver. *Bac. Max. 87.*

When a Man is *married* to a Woman, all her Goods and Chattels by *Gift in Law*, become the Husband's. If a Man be made *Executor* of a Will, the Law gives him the Goods of the Testator. And if a Person make a Suit of *Cloaths* for another, and puts it on upon him to use and wear, this will be a Gift, or Grant in Law of the Apparel made. *Co. Lit. 351.*

Grants.

When a Grant is *incertain*, and the Words of it are Ambiguous, the Grant shall be taken most strongly *against the Grantor*: And if a Deed be good for Parcels, and for some Parcels not, that which is for the Advantage of the Grantee, will stand good. If a Grant be made to a Man and his *Heirs*, the Word *Assigns* is included in the Word *Heirs*; and the Grantee may assign at his Pleasure. And if a Man grant to another Timber Trees, the Grantee may *come upon the Ground*, to cut them down and carry them away, through the Grantor's Land. *Plowd. 15. 1 Saund. 322.*

Dashes and *Abbreviations* in Grants are to be so taken, that the Grant be not void: *Tot. il. Maner.* A. & B. may be taken either in the Singular or Plural Number, rather than the Grant shall be void; and though a Writ may abate for *false Latin*, yet in a Grant it shall not avoid it. *9 Co.*

Grant of a *Manor*, without the Words *cum pertinentiis*, will pass all Things belonging to the Manor: A Grant of a *Farm*, will likewise pass all Lands belonging to it; but a Grant of a *Messuage*, or of a *Messuage cum pertin'*, will only Pass the House, Out-houses and Gardens. If a Man lets the *Scite* of a Manor, with all Lands to the Manor appurtenant, hereby all the *Demesne Lands* do pass: But if it were with all the Lands appertaining to the *Scite*, nothing passeth but the Manor Place. *Owen's Rep.* 51.

It has been held, That where a Grant is made of Lands and Tenements in D. that *Copyhold Lands* pass not, because they cannot pass by such an Assurance, but by Surrender. *Owen* 37. If I Grant *All my Lands in D. which I had of the Grant of I. S.* this is a good Grant of all my Lands in D. whether I had them of I. S. or any other: But if the Words be, *All my Lands which I had by the Grant of I. S. in D.* then the Grant is not good to carry other Lands in D. but such only as I had of I. S. *Mich. 2 Jac. Brown's Case.*

If one Grant Land to A. B. and C. D. *To hold to them during their Lives*, omitting the Words and the longest liver of them; yet notwithstanding, they shall hold it during the Life of the longest Liver. But if A. Grant Lands to B. *Holdendum* to him and C. and D. for their Lives, in this Case A. only shall have it for his own Life. *5 Rep.* 9. 11. *Palm. Rep.* 32.

In Grants there must be a Foundation of Interest in the Grantor; and the Law will not allow of Grants of Titles, or imperfect Interests, or of such as are merely future. If a Man Grant a Rent Charge out of Lands, when he hath nothing in the

the same, tho' he afterwards purchase the Lands, the Grant is void. But a Man may Covenant to purchase an Estate, and levy a *Fine* to Uses, which will be good. *Perk. 15. Bac. Max. 58.*

And if a Man grants an *Annual Rent* out of Land wherein he hath *no* kind of *Interest*, yet it may be good to charge the *Person* of the Grantor in a Writ of Annuity. *Owen. Rep. 3.*

Habeas Corpus.

A *Habeas Corpus* Removes a Person and Cause, from one Court and Prison to another : And where a Person is arrested, and cannot procure Bail, he may remove himself by this Writ either to the *Fleet* or the *King's-bench* Prison; and go at large within the Limits of those Places. The common Expence of this last is 5 or 6 l.

If a Prisoner is committed to the *Fleet* upon *Habeas Corpus*, and the *Commitment* is not filed and recorded by the Prothonotary, in this Case if the Prisoner *Escapes*, no Action will lie against the Warden of the *Fleet* for the same, so that to prevent this Inconvenience, the Attorney that sues forth the *Habeas Corpus*, must duly file the same in the Prothonotary's Office, that it may be recorded as it ought. *Comp. Attorn. 55.*

Habeas Corpus Act, for Bailing and Trying Prisoners, in Criminal Cases, vide *Titul.*

Heirs.

One cannot be Heir 'till after the Death of his Ancestor; before he is called *Heir Apparent*; and by the Common Law a Man cannot be Heir to Goods and Chattels. No Heir to Lands coming by the *Father*, may Inherit them 'till after his *Death*; but Lands descending from an Ancestor of the *Mother*, he may. *Co. Lit. 8, &c.*

An Heir shall never be bound by any Obligation, or *Warranty*, but where his Ancestor was bound by the same; for if the Ancestor be not bound, it cannot descend upon the Heir. If a *Rent Charge, &c.* be granted to one and his Heirs, the Grantee shall not have Writ of *Annuity* against the Heir of the Grantor (if there be *Assets*) except the Grant be for *him and his Heirs*: And the Heir by the Grant of an *Annuity* by the Ancestor, altho' he be named, shall not be bound, unless he have *Assets*. An Heir bound by a Bond, may plead *Riens* by Descend. *Co. Lit. 144. 386.*

But a Grant of an *Annuity* for a Man and his Heirs, to be paid annually at the four usual Feasts, for 30 Years to commence after the Death of the Grantor, hath been adjudged good to bind the Heir, altho' it privily commenc'd in him for the Grantor charg'd *himself*, and the Grant is for him and his Heirs: So it is of an *Obligation* where a Man binds himself and his Heirs to pay Money after his Death. *Lit. Rep. 245.*

If there be no Heir Male to an Estate in Fee Simple, &c. but divers Females, as Daughters &c. they shall inherit together, and are by the

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Law esteem'd but one Heir, call'd *Parceners*. The eldest *Parcener* is to chuse her Part first, in case of *Partition*; and if *Partition* be made of entail'd Lands, it must be *equal* to bind the Issue; but of *Fee-simple* Lands, it may be otherwise. *Co. Lit.* 156.

Vide Blood, Descent, &c.

Heir-Looms.

A Man seized of an House, and possess'd of divers *Heir-Looms* that by *Custom* have gone with the House from Heir to Heir, *devise*th the same from the Heir, this devise will be void; for the Will takes not Effect 'till after the Death of the Testator, and by his Death, the *Heir-Looms*, by the ancient Custom, are vested in the Heir. *Co. Lit.* 185.

But Sale in a Man's Life-time, to take Effect presently, might be good.

House-Burning.

Burning of Houses *maliciously* or *voluntarily* is Felony: And if a Man maliciously or voluntarily burns his own House to the Intent to burn others, it is Felony in him, if the Intention be executed: But if his own House only is burnt, it will not be Felony; though it is then a great Misdemeanor, punished by Fine, Pillory, &c. *Cro.* 378.

If Servants through Negligence set Fire to Houses, they shall Forfeit 100*l.* or be sent to

Persons in Office, Ecclesiastical Persons, Ser-
vants at Law, Counsellors, Attorneys, &c. re-
fusing to take the Oaths of Abjuration, &c. are
incapable to execute their Offices and Employ-
ments; disabled to sue in Law or Equity, and to
be Guardians, or Executors; and to forfeit 500l.
Stat. 13 W. 3. 1 Ann. 1 Geo.

Incumbrances.

A Man is bound to another, in a certain Pe-
nalty, to save him harmless against all Suits and
Incumbrances brought or to be brought by a
third Person; and afterwards this third Person
sues the Obligee, and proceeds to Judgment:
Now tho' in the Eye of the Law, until Goods
or Lands are actually charged, there is no Damage;
yet in this Case there is an executory Damage,
and a Man's Land is in some sort charged; for
who will purchase it of the Party but under
Value, when it is liable to the Judgment execu-
tory. *Ridgley's Case, 33 Eliz.*

*Ergo the penalty is
recoverable in this Case
as soon as suit is commenced;
but if the goods or lands
should not be actually charged*

Indictments

Indictments are brought at the Suit of the King; and they must set forth the Christian Name, Surname, and Additions of the Estate, Place of Residence, &c. of the Offender; the Certainty of Time wherein the Offence is done, as the Day, Year, &c. the Nature of the Offence; and the Value of the Thing by which it is committed, &c. and a Man may be indicted by another Name than his right Name, where he is known

*by as soon as the
3d Person's suit
is dropped, for a
back penalty in
Cases as above.*

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*2. What the Bond will operate in case of a breach of the
Bonds? This depends chiefly on the words of the Condition.*

by both; or for stealing Goods from an *unknown Person*, &c. (But in Treason the Officers of the Crown are not obliged to set down the very Day the Fact is committed.) *Co. Lit.* 303. 2 *Inst.* 318.

If these Things are not observed, the Indictment may be *quash'd*; but *false Latin* (so as it be *Latin*) shall not quash an Indictment. If a Man be convicted upon an *insufficient Indictment*, and no Judgment be given upon it, he may *again be indicted*; If an Indictment is void for Insufficiency, or if the Trial be in a wrong County, *another Indictment* may be drawn for the same Offence; and it may be laid in *another County*, tho' Judgment be given. *H. P. C.* 244. 5 *Rep.* 121.

When the Indictment is *found*, in the *proper County*, it may be heard and *determined* in any *other County*, by *special Commission*; but the Trial ought to be by Jurors of the proper County. If one be indicted of Treason, it may, by pleading a *Foreign Plea*, be tried in a Foreign County: But in Cases of Murder, Felony, &c. the Offence shall be tried where the Indictment is taken; if no special Commission be sued out. *3 Inst.* 27.

By 1 *Geo.* *High-Treason* committed within the Realm, upon the late *Rebellion*, was to be tried in any County the King thought fit.

Informations.

The Clerk of the Crown, in the King's Bench, is not to receive or File any *Information* for Trespass, Battery, &c. without Order in open Court; and before he Issues any Process, he is

to take a *Recognizance* in a certain Penalty, for the Plaintiff to prosecute with Effect. If the Defendant appears, and the Plaintiff do not proceed to Trial in a Year's Time; or if Verdict pass for the Defendant, the Court will award Costs, &c. Stat. 4 & 5 W. & M.

An Informer is to exhibit his Suit in Person; and not *compound* the Offence, under the Penalty of 10*l.* and Punishment by Pillory: But this relates to *Crimes* of a publick Nature, beyond Trespass, &c. Stat. 18 Eliz.

Infants.

Before the Age of 21 Years, no Man or Woman can alien any Lands, Goods or Chattels, or bind themselves by Deed; except it be for common *Necessaries*, such as Eating, Drinking, Apparel, Schooling, Physick, &c. suitable to their Qualities: An Infant must pay for these; but if he bind himself by *Bond* for Payment, he may plead *Infra Ætatem* to such Bond. Co. Lit. 171.

An Infant may do any Thing for his own Advantage, as to make a Purchase, &c. but at his full Age, he may either agree to the Purchase, and perfect it, or disagree to it at his Pleasure. Co. Lit. 2, &c.

Things of *Necessity* must be done by Infants; as *Presentations* to Benefices, &c. Otherwise Lapse will incur against them: And if one within Age be appointed *Executor*, upon Payment of a Debt due to the Testator, he may make an Acquittance. Infants are bound by our

our *Statute Laws*, where they are not excepted.
1 *Inst.* 171. 172.

At twelve Years old, one may take the *Oaths* of *Allegiance*. At fourteen Years of Age, a *Man* may consent to *Marriage*, choose his *Guardian*, &c. And this is accounted the *Age of Discretion*, as to committing Crimes, for a Person to be a *Witness*, &c. A *Woman* must be nine Years old to be entitled to *Dower*; and twelve to consent to *Matrimony*, &c. And it is said that a Person under Age may by *Will* dispose of *Goods*, &c. tho' he may not grant them in his Life-time.

Inn-keepers.

Inn-keepers are *accountable* for all Things *delivered to them* by their *Guests*; and if a *Man* come to an *Inn*, and deliver his *Horse* to the *Ostler*, saying *nothing* to him, and the *Horse* is stolen either from the *Stable* or a *Pasture* abroad, the *Inn-keeper* shall be *obliged* to make it good: But if the *Owner* give *Order* to the *Ostler* to put the *Horse* abroad into a *Pasture*, and the *Horse* is stolen from thence, or lost, in such *Case* the *Inn-keeper* may be excused. 8 *Co.*

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And as *Inn-keepers*, &c. are *answerable* for what they receive; so are their *Guests*, as to *Plate*, &c. set before them; which it is *Felony* to take away.

Intentions.

Intentions.

The *Intention* of Parties is the chief Thing to be regarded in Contracts; and such Words as shew the *Assent of Parties*, and have Substance in them, are sufficient. By the Intention of Persons, *Mistakes* are *rectified* in Deeds. A Bond made from *A. B.* to *C. D. solvend.* to *A. B.* it has been adjudged good to *C. D.* And an Indorsement on a Bond, by the Obligee only, has been held valid, from the Intention. *Plowd.* 141.

In *criminal Cases*, if a Man having a *malicious Design* to kill another, kills a Person *not* intended, he shall be adjudg'd a Murderer; (and formerly *the Will* was so material in felonious Attempts, that it was reputed *the Fact* it self) where a Person in the Night breaketh a House, &c. with an *Intent* to commit Felony, it is a capital Offence. If a Man take Goods, tho' he remove them *never so little*, if he be apprehended *before* he gets away, it is Felony; and if a Thief is taken before he has led the Horse out of the Pasture, this will be Felony, from the Intention. *3 Inst.* 108. *Plowd.* 474.

Jointure. See Dowry.

Issue.

After a Suit is begun in the Courts at *Westminster*, and the Parties in their Pleadings *vary* in some *Point of Fact*; as if in Action of Debt, the Defendant denies it to be his Debt, or in Action

Action of Trespass for taking of Goods, the Defendant denies that he took them, &c. then the Plaintiff is to prove the Debt from the Defendant, that he took the Goods, &c. upon which Denial and Affirmation the Law saith that *Issue* is joined between the Parties.

In real Actions, Causes grown to Issue are tried by a Jury of twelve Men of the County where the Cause of Action arises, whither they are brought down in Time of Vacation, &c.

Jurymen.

Jurymen are to have each of them 10*l.* per Annum Freehold, or Copyhold, within the same County; and *Tales Men* 5*l.* per Annum: Stat. 4 & 5 W. & M. (By 23 H. 8. Felons may be try'd in Corporations by Freemen worth 40*l.* in Goods) And Constables, &c. are to return to the Justices of Peace in the Quarter-Sessions, Lists of Persons qualified to serve on Juries, who are to be impannell'd by Sheriffs, &c. Stat. 7 & 8 W. 3.

Jurymen are to be Freemen, indifferent, and not outlaw'd, or infamous Persons. Aliens; Men attainted of any Crime; Apothecaries, Clergymen, Infants, Persons seventy Years old, &c. ought not to serve on Juries: If they are impannell'd, they may be excepted against; as also if they are of Affinity to either Party, interested in the Suit, &c. Co. Lit. 154. 3 Inst. 24. 27.

The Jury are Judges, upon Evidence, of Matters of Fact: And sometimes a *Special Jury* is granted, which is done by the Prothonotary's taking

taking out the Names of forty eight Persons from the Sheriff's Book of Freeholders; whereof each Party strikes out twelve, and the Sheriff impannels the rest. See more of *Jurors*, *Verdict*.

Challenge of Jurors. Vide Exception.

Justices of Assize, &c.

Justices are to take an *Oath* to serve the King; to do Justice to all, without Respect of Persons; and deny Right to none, tho' commanded by the King; to take no Bribes; maintain no Suit; nor give Counsel, where they are Parties, &c. And are to be answerable in Body, Lands, and Goods. *Stat. 18 Ed. 3.*

Justices of Assize and Gaol Delivery, are to hold their *Sessions* in the chief Towns of every County. But no *Justice*, or other Person learned in the Law, shall be Justice of Assize in the County where born, or he doth inhabit, under the Penalty of 100*l.* but this is *not* to extend to the Clerk of Assize, or any Associate, &c. Nor to prejudice any *Justice* of either *Bench* in hearing and determining Assizes in those Courts, &c. *Stat. 33 H. 8.*

The twelve Judges are commissioned to go in several *Circuits* twice a Year in every County of England, except *Middlesex*; and judge of Civil and Criminal Causes, in their Courts of Assizes.

King's

King's Bench.

X Every Person sued in the Court of King's Bench, is supposed to be in the Custody of the Marshal of the Court; This is on the *Plea Side*, in Actions by Bill, for Debt, Detinue, Covenant, Account, Actions on the Case, &c.

On the *Crown Side*, this Court has Cognizance of all Treasons, Felonies, Breaches of the Peace; and all Causes prosecuted by Indictment, Information, &c.

See Certiorary.

Law Books.

King William the First, called the Conqueror, being a Native of Normandy in France, caused the Laws of this Realm, in his Time, to be written and *pleaded in French*; which is the chief Reason why most of our Law Books of Antiquity were printed in the *French Language*: for it was not originally designed to keep People in Ignorance, as some Persons imagine, or to make the Study of the Law difficult. 3 Co. 17.

Leases.

Leases.

All Leases, Estates, &c. of Lands, not put in Writing and signed by the Parties, will have the Effect of Leases at Will only. Stat. 29 Car. 2. But *Vide* the Exception in that Act.

A Lease is sealed by the Lessor, and the Lessee hath not sealed the Counterpart, yet Action of Covenant may be brought upon the Lease, against the Lessor: But where an Indenture of Lease is sealed by the Lessee, and not the Lessor, nothing operates in respect of the Estate or of the Covenants. Telv. 18. Owen Rep. 100.

A Lease for Years may commence from a Day to come, as *Michaelmas next*, three or seven Years after, or after the Death of the Lessor, &c. But a Lease for Life of any thing, if it be in *Esse* before, it is said cannot begin at a Day to come: Tho' a Lease in *Reversion* may be made, for Life, which commences at a Day that is future. Co. Lit. 5.

If a Lease is made, *To hold from the Date*, or the Day of the Date, it begins the next Day after; but if it be *To hold from thenceforth*, it commences from the very Day of the Date: And if *no Time* be mentioned for its commencement, it is to have Beginning from the Delivery. Co. Lit. 46.

A Lease from Year to Year, so long as both the Parties please, after Entry in any Year, it is a Lease for that Year, &c. 'till warning be given to depart. And a Lease for a Year, and so *To hold from Year to Year*, during the Life of A. B. is said to be for two Years only; by reason of
Incer-

Incertaincy: But if it had been made for a *certain Number of Years*, if A. B. live so long, it would be a good Lease for the whole Term. *Noy. Max. 65.*

If a Lease be made to a Man for *sixty Years*, if A. B. and C. D. *so long live*; and afterwards A. B. dies, by his Death the Lease is determined: But if the Lease be made to one, for the *Lives of A. B. and C. D.* the Freehold doth not determine by the Death of one of them. *13 Co. 66.*

And if in the other Case, the Words or *either of them so long live*, be inserted in the Lease, it will last during both their Lives.

Leases are to have the usual *Covenants*, Ceremonies, &c. the Lessees must accept of the Things demised; and if of the Wife's Lands, they must be made by Husband and Wife, &c.

Vide Acceptance, Certainty, Estate Tail, Tenants, &c.

Liberty.

Upon all Occasions the Law of *England* is favourable to *Liberty*. By *Magna Charta*, and other Statutes, no Freeman is to be *imprisoned* or condemned, on any Accusation, without Trial by his Peers, or the Law: No Person is to be *Arrested* without Process at Law, Indictment, &c. And none shall be *ousted* of his Freehold, but by Law.

All this is in favour of *Liberty*; and my Lord Coke tells us, That the most general Rule is, that every *Trial* shall be out of that Town, Precinct, &c. within which the Matter of Fact issuable is alledg'd.

alledg'd, or the nearest thereunto; the Inhabitants whereof are suppos'd to have the best and most certain Knowledge of the Fact committed.

Co. Lit. 125.

If a *Jury* be returned from a wrong Place, or by a wrong Officer, though Verdict be given, Judgment ought not to pass thereupon. *Co. ibid.* This is still in favour of Liberty: And 'tis owing to our Liberty that we are a Great, Flourishing, and Happy People.

Livery of Seisin.

Livery of Seisin is *made*, by taking a *Ring*, *Latch*, or *Key* of the Door of a House; or *Clod* of Earth, if it be Land; *Twig* of a Tree, if it be Wood, &c. and all the People being out of the House, Ground, &c. the Ring, Clod, or Twig, &c. with the Deed, are to be delivered over to the Person that is to take Possession, or his Attorney, saying the usual Words, *viz.* "I A. B. &c. do deliver to you C. D. &c. Possession and Seisin of this Messuage, &c. To hold to you, your Heirs and Assigns, according to the true Intent and Meaning of the Deed." After this, the Feoffee, &c. enters into the House, &c. first alone, and shuts the Door; but soon opens it, and lets in the others.

If any Person, as a Lessee for Years, remain in the House or Land, or any Part thereof, and *contradict* the Livery of Seisin on a Feoffment, the Livery is void; but if such a Lessee go out of the House by *Agreement*, although he remain on some Part of the Land, the Livery will be good: And if the Lessor *extrude* the Lessee by Force

into the Highway, so that he be not on any Part of the Land at the Time of the Livery to the Feoffee, the Livery will be good. *Dalif. Rep. 94.*

The Livery of Seisin is to be *endors'd* on the Deed, with the Time of executing it, attested by Witnesses; And it is necessary in Feoffments, Leases for Life, &c.

Lunaticks.

If a Madman commit a *Murder* or *Felony*, he shall not suffer as a Felon; because the Punishment of such can be no Example to others, and he is without Mind and Discretion: But if a Lunatick kill the King, or offer to kill him; he shall be Guilty of *Treason*, and may suffer accordingly; for the King being the Head and Safety of the State, his Person is Sacred. 4 Co. 124.

If a Person of Malice set a Madman upon killing another, and he doth it; in this Case, forasmuch as the Lunatick is *excus'd*, because the Law adjudges he cannot have any Will or Malice, the Inciter, though he be absent, will be a principal Murderer. 13 Eliz.

A Madman cannot *Promise*, or *Contract* for any Thing, or transact any Affairs, because he understands not what he does: His Acts may be avoided, (unless he Levy a Fine, acknowledge a Statute, &c.) And the King has the Care and Custody of the Lands of Ideots and Lunaticks; finding them and their Families Neccessaries, &c. and afterwards rendering the Estates to the right Heirs. 4 Co. 126. Stat. 17 Edward 2.

Majorities.

Majorities.

THE Dean, and the *major Part* of the Chapter make the Chapter, and their Act is accounted the Act of the Corporation: The Consent of the major Part of any Corporation, shall be binding in making of By-Laws: *Commoners, &c.* may make By Laws, and the Consent of the major Part shall bind the rest; (except in Case of Enclosures.) And the major Part of *Electors*, make the Election of Members to Parliament, &c. Stat. 19 H. 7. 8 Ed. 3.

But the major Part of *Creditors* may not, by any Act of theirs, bind the rest; they can only bind themselves; though there was once a Law in Being, that two thirds, in Number and Value, might make Compositions, and bind the others. But this is repeal'd. Stat. W. 3.

Marriage.

All Persons, *not prohibited* by the levitical Degrees, or otherwise by God's Law, may lawfully Marry: The Son of a Father by another Wife, and the Daughter of a Mother by another Husband, *Cousin Germans, &c.* may Marry with each other: But they must be of the Age appointed by Law, viz. The Man fourteen, and the Woman twelve; otherwise when at that Age they may disagree to the Marriage. Co. Lit. 33, &c.

The *Consent* of the *Mind* is chiefly regarded in contracting of Matrimony: And if a Father or Mother promise Marriage for their Child, the Child's *Silence* (she hearing the same) will be adjudg'd a Consent. And if a *Ring* be solemnly delivered, and put on the Woman's fourth Finger by the Party himself, and she willingly *Accepts* and wears the same, the Parties are presum'd mutually to have consented to Marriage. *Swinb.* 210.

Considerable Damages may be recovered on a *Promise* (in Writing) of Marriage, where a Woman afterwards refuses to marry a Man, or a Man a Woman; because depending on such Promise they may be hindered in making their Fortunes with others. And by *Marriage* with a Woman, a Man is entitled to all her *Estate* Real and Personal; but then he is liable to the Payment of her Debts. *Co. Lit.* 357.

If a Man *steal an Heiress*, it is Felony. *Stat.* 3 *H.* 7. But if she carries him to the Place appointed for Marriage, he will not be criminal: The Advice Serjeant *Mainard* gave to a young Gentleman, who privately courted his Daughter, was, That *she* should *Ride before* him; which effectually evaded this Law.

If any Persons being married, do marry *any other* Person, the former Husband or Wife being alive, they will be guilty of Felony: But this does not extend to any Person, whose Husband or Wife shall be absent beyond Seas seven Years; or in *England* seven Years continually, not knowing the other to be living; nor where Marriages are declared void; or made by Persons within Age of Consent, &c. *Stat.* 1 *Jac.* 1.

Merchants.

Merchants.

A Merchant of *Holland*, or any other Nation, buys Goods in *London*, and gives a Note of his Hand for Payment, and afterwards *flies* into *Holland*; the Seller of the Goods, though he may not here prosecute for his Debt, yet on Proof of the Sale and Delivery, before the Lord Mayor of *London*, shall have a *Certificate* from him, and the People of *Holland* will execute a Process against the Party. 4 *Inst.* 38.

Custom amongst Merchants. Vide Bills, Promises, &c.

Mines.

If a Man make a Lease of Lands, wherein there are *hidden* Mines, and all the Mines, the Lessee may at his Pleasure dig for the same; but if a Man make a Lease of his Lands, in which there is a hidden Mine, but Mines are not mentioned in the Grant, he cannot dig for such Mine. It is necessary that the *Mines* be *mentioned*, as well as the Lands, to entitle the Lessee to the Profits thereof. 5 *Co.* 12.

Digging Mines of Mettal, Coals, &c. without a particular *Power* by Lease, is Waste; but if a Mine be *open*, the digging in it will be no Waste. And where a Lease is made of Lands, with the Mines in the same, and there are Mines open, the Power of digging will extend to them only. *Co. Lit.* 53.

Mines of *Gold and Silver*, by the Common Law, belong to the King; and only Mines of *Brass, Copper, or Lead*, may belong to a Subject: But a Royal Mine may, by Grant of the King, be sever'd from the Crown. And by Stat. 1 *W. & M.* No Mine of *Copper, Tin, &c.* shall be adjudged a Royal Mine, tho' *Silver, &c.* be extracted. See Stat. 5 *W. & M.*

Treasure hid in the *Earth*, and *Coin*, tho' not hidden, being *found*, is the King's: But Treasure found in the *Sea*, the Finder shall have it.

Money.

Any Person may lawfully *cut*, break, or deface Pieces of Silver Money, suspected to be *Counterfeit*, or diminish'd otherwise than by wearing; but if such Pieces of Money, when cut or defac'd, appear to be good Coin, the Defacer thereof shall stand to the Loss. Stat. 9 & 10 *W. 3.*

So that there is a Precaution requisite in this Case; and a Man ought to be sure the Money is *Counterfeit*, before he attempts to deface it.

Mortgages.

The *Interest* in Law in Lands mortgaged, is in the *Mortgagee* before Forfeiture; for he hath purchased the Lands, as it were, upon valuable Consideration, as the Law will intend; and tho' the Mortgagor may Redeem, yet it is not certainly known whether he will or no; and if he do not, the

the Estate is absolute in the Mortgagee. *Micb. 23 Car. B. R.*

By Payment of the Interest of the Mortgage-Money, Mortgages are renewed and continued; and 'till Failure is made in Payment of the Money, the Mortgagor holds the Lands. The Heir or Executors of a Mortgagor, coming within the Time limited, may pay the Money and save the Forfeiture: But if no Time be limited, and the Mortgagor doth not pay it during his Life, his Heirs, &c. shall not be received to pay the Money. *Co Lit. 206.*

Executors shall have Money due on Mortgages, where a Mortgagee in Fee dies before the Day of Payment, unless the Heir be particularly named in the Proviso: And where the Heir is named, if the Day be past, 'tis as much as if no Person had been express'd; and then the Law appoints it to the Executor. *1 Inst. 210. Salk. 450.*

Persons Mortgaging Lands a second Time, without discovering the first Mortgage, Forfeit their Equity of Redemption; and the second Mortgagee, &c. has Power to redeem. *Stat. 4 & 5 W. & M.*

See Priority, Defeazance.

Murder.

'Tis Malice makes a Murder; and if one resolves to kill the next Man he meets, and does kill him, this is Malice against all Mankind. A Man gives another Money to strike him, and he afterwards kills him, it shall be adjudg'd he did it to cover his malicious Intention. In Duel-

ling, &c. it is of no Signification who *begins* the Quarrel; reproachful *Words* will not extenuate; and not only the Principal, who kills his Adversary, but also the Seconds are guilty of Murder, whether they fought or not. If two, or more *assemble* to do an unlawful Act, as to beat a Man, &c. and one of them kills a Person, this will be Murder in all. *Kel. Rep. 65, &c. H. P. C. 31, 51, &c.*

An unlawful Act *without* an ill *Intent* is Manslaughter; and *with* an ill *intent* Murder: If one killeth another by throwing a Stone over a Wall in a Place where People often Resort; or at another in Play, it is Murder, if done with an evil Intention to hurt. And throwing a Stone over a House, or Wall, among a Multitude of People, knowing they were there assembled, and Death ensues, shews an evil Intention of doing Mischief, and is Murder. *Riding* an unruly Horse, into a Fair, knowing him to be so, and on purpose to do Mischief, if Death ensues, it is Murder. *3 Inst. 57. H. P. C. 45.*

If a Person shoot off a Gun in a City, or Highway, or other Place, where there is usually a Resort of People, which must of Consequence put the Life of a Man upon Hazard, and a Man is kill'd, he is guilty of Manslaughter. If a Man shooting at the tame Fowl of another, which is an unlawful Act, kill a stander by, it will be Murder: If he be shooting of wild Fowl, &c. and he is not qualified to keep a Gun, it is Manslaughter: And if he be qualify'd to keep a Gun, which makes the Act lawful, 'tis only Chancemedley. *H. P. C. 31, 58. 3 Inst. 56.*

If a Woman's Husband kill an *Adulterer*, taken in the Fact, 'tis only Manslaughter; and Cutting off his privy Members, is only Maihem: A Woman

Woman may *justify* the killing a Man who attempts to Ravish her. And both Man or Woman, or any of their Servants, may lawfully kill a Person attempting to commit Murder, Robbery, or Felony. *Kel.* 137. *3 Inst.* 118.

Murder may be committed by Weapon, Poison, Bruising, Wounding, Shooting, Smothering, Strangling, &c. but in Case of Wounding, *Death* must *ensue* within a Year and a Day after the Wound given. If a Man receive one, who gave a mortal Wound to another, *before* the Death of the Party wounded, he cannot be Accessary to the Murder; for the Fact must be Felony at the *very Time* he becomes Accessary. In Manslaughter there can be no Accessaries before the Fact, because the Offence happens on a sudden. *3 Inst.* 188. *4 Rep.* 44.

Where a Murder is committed, the Coroner is to enquire, *super visum Corporis*, how the Person was kill'd, by whom, the Persons present, &c. And if the Body be buried before he comes, he may cause it to be dug up, and the Vill shall be amerced. *Stat.* 4 *Ed.* 1. *Aleyn* 57.

Necessity.

ANY Person, in his *Defence*, may kill others for the Safety of his Life; for the Necessity of it: but Malice must not be colour'd under Pretence of Necessity. If several Persons are in Danger of *Drowning*, by the casting away of a Ship, Boat, &c. a Man may thrust another from a Plank, to save his own Life. And if a *Fire* happen

happen in a Street, a Man may justify the pulling down a Wall, or House of another Person, to prevent its spreading; and this is because it is Necessary. *Bac. Max. 25. Staundf. &c.*

Nonfuit. Vide **Default, Costs.**

Nuances.

If a Man hath a *Water-course* running to his House for his necessary Use, and a Tanner erects a Lime-pit so near it, that the Corruption of the Lime-pit spoils the Water: If Dye-houses are erected, the Stink and Filth of which destroy *Fish* in a *River*: And where a Hedge, Gate, &c. is erected on cross a *Highway*; Ditches are dug or Logs of Timber laid therein, &c. These are Nuances. *2 Roll. Abr. 137.*

The two first are of a private Nature, and *Action* of the Case lies for the same: To remedy the last, you must proceed by Indictment.

Outlawry.

WHere a Man is call'd in to the Law, and doth *not* appear upon three Writs issued against him, whereupon an Exigent is awarded, directed to the Sheriff to make Proclamation in five County Courts, charging him to appear; if he do not then appear, he is depriv'd of the Benefit of the Law. In former Times, this Outlawry was so great a Punishment in itself, that any

Law Outbills.

91

any Persons might kill the Offender, as a Wolf, wherever they met him; but it was then for Fe-
onies only; and now Outlawries are become fre-
quent in personal Actions.

The same Term the Exigent and Proclamation
are sued forth, in order to Outlawry, a Warrant
of Attorney must be filed for the Plaintiff, or it
will be manifest Error in the Prosecution, to the
great Hinderance of the Client, and Prejudice of
the Attorney; who by Statute will incur a For-
feiture of 10 l. *Comp. Attorn.* 17.

Pardons.

BY the *Common Law* the King had Power to
pardon all Offences; but this Power is re-
strained by Statutes, especially in Cases of Mur-
der.

The King cannot Pardon Murder, in Case
an Appeal be brought; which is at the Suit
of the Party, and not of the King, and the Ap-
pellee is to have Judgment of Death. On Ap-
peal of Rape, &c. it is the same. *Stat. 3 Ed. 3.*
2 Inst. 316. But the King may grant a Reprieve
for a long Term of Years; or reprieve from Time
to Time, which amounts to a Pardon; tho' this,
as it ought, is very seldom practis'd.

Partition and Parceners. Vide *Heirs.*

Datons.

Pawns, Pledges.

When Goods are pawn'd, the Party that pledges the Goods hath such a general Property in them, that if they are casually lost, he must bear the Loss; they cannot be forfeited by the Party that hath them in Pawn, for any Offence of his, nor be taken in Execution for his Debt: Neither may they otherwise be put in Execution, 'till the Debt, for which they are pawn'd, is satisfied. *Lit. Rep.* 332. *Owen.* 124.

If a Man have Jewels in Pawn for a certain Sum of Money, and he that putteth them in Pawn is attainted; the King shall not have the Jewels, unless he pay the Money. *Plowd.* 487.

Where Goods are pawn'd for Money, without a Day being set for their Redemption, they are redeemable at any Time, during the Life of the Borrower; but where the Day is limited, it must be strictly observed.

A Pledge may be redeem'd after the Death of him to whom the Goods are pledg'd, no Time being appointed for it; but not after the Death of him who pledg'd the Goods. *2 Cro.* 245. In common Cases, *Brokers* generally stay but a Year for their Money, at the End of which they sell the Goods, if not redeemed.

He that takes a Pledge may assign it over to another; if he dies before it is redeem'd, his Executors shall have it, upon the like Terms as he had it: And if perishable Goods lie in Pawn 'till spoil'd, the Party that pledg'd them shall bear the Damage; and he to whom pledg'd, may

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may have Action of Debt for his Money. Co.

Lit. 89. &c. *But who? &c. may have action after pawned, &c.*

But this last is where the Goods pledg'd are spoil'd, without any Default in him that hath the keeping them.

Wrongful Sale of Goods Stolen, &c. by Brokers, in London, will not alter the Property: And Brokers not discovering such Goods to the Owner, to forfeit double Value. Stat. 1 Jac. 1. c. 21.

Peers.

Peers, and Members of Parliament, &c. may not be arrested in their Bodies, for any Debt, &c. But their Estates may be sequestred, on Process of Summons, original Bill, &c. when they refuse to Appear, or to Answer.. Stat. 12 W. 3.

Scandalum Magnatum, may be brought by a Peer, or Nobleman, for Slander; who Prosecutes as well for the King as himself: And in these Cases, great Damages will be recovered; so that a Man ought to be cautious in saying any Thing of a Peer. which affects his Honour, or tends to his Disgrace. But a Man may justify in Scandalum Magnatum against a Peer, setting forth the special Matter. Stat. 12 R. 2.

A Peer is not put to his Oath; but his Pleadings are on his Honour.

Trial of Peers. Vide Trial.

Physicians.

Physicians, &c.

A Physician authoriz'd to practise, through Negligence, &c. suffering a Patient to die, shall not be questioned for his Life; And yet if a Chirurgeon do only hurt a Wound, whereby the Cure is retarded, which may be proved, and the Patient doth not die, Action of the Case may be brought against him. Staundf. 16.

If a Physician, or Surgeon, not duly authorized, undertake the Cure of a Patient, and the Patient dies under their Hands, this is said to be Felony. Fitz. Coron. 163:

Pleading.

Every Special Plea must be pleaded *in Bar* to the Action brought, or in *Abatement* of the Writ, otherwise it is but a Discourse, and no Plea, because the Plaintiff cannot take Issue upon it; and therefore if the Plaintiff do demur upon it, and his Demurrer is adjudg'd good, he shall have Judgment against the Defendant, for want of Plea.

The general Issues pleaded by the Defendant are, in Action of Debt, *Nil Debet*; Action of the Case, Trespass, &c. *Not Guilty*; and if upon Promise, that he did not assume, &c. If the Defendant plead Specially in C. B. or the Plaintiff reply Specially, both Plea and Replication are to be under a Serjeant's Hand, and deliver'd to the Attornies on both Sides: Special Pleas in B. R. are to be under Council's Hand.

If the Attorney for the Defendant, upon receiving a Declaration, do not crave that the Condition of a Bond may be entered with the Impar lance, &c. he will be debarr'd from pleading *Conditions performed* at any Time after, without moving the Court. Where an Obligation is made to pay a Sum of Money, or do such an Act, at such a Feast; it is no Plea to say, that the Obligor did pay it, &c. but he must shew at *what Time*, or else it may be taken that he paid it after the Feast. *Noy. Max. 15.*

In the *Common Pleas*, the Defendant is to plead the same *Term* he appears, if the Writ be returnable at the Beginning of the Term, especially in *assuable Terms*; but in other Terms, if the Action be not laid in *London*, the Defendant has generally an *Impar lance*, or Time to plead 'till the next Term. *Comp. Attorn. 37.*

In *C. B.* a Plea being entered, may not be amended or alter'd. But on a Demurrer, before joinder in Demurrer, the Defendant may amend, paying Costs; and sometimes it is allowed afterwards, *before argued*. In *B. R.* the Defendant may amend his plea; on Paying Costs, although it be three Terms after pleaded, if it be *not entered*; and where the Plaintiff alters his Declaration, after the Defendant hath pleaded to it, the Defendant may alter his Plea. *Pract. Attorn. 153. Styles Reg. 453.*

Pleading must be, First, To the Jurisdiction of the Court. Secondly, To the Person. Thirdly, To the Count. Fourthly, To the Writ. Fifthly to the Action. But if these are *misordered*, a Man cannot plead any Thing afterwards which he might at *first* have pleaded.

No *dilatory Plea* shall be received in any Court of Record, unless the Truth of it be proved by Affidavit, or probable Matter be shewn. Stat. 4 & 5 Ann.

Vide Debtor and Creditor.

Possession.

Long *Possession*, Time out of Mind, *Bracton* tells us, sufficeth for a *Right*. And that Measure of Time that maketh such a possessory Right by which a Fee-simple may be attain'd, according to *Littleton*, is where Things have been used so long as the *Memory* of *Man* cannot remember the contrary; that is, either by the Knowledge and Memory of Proof, or by Record, or sufficient Matter in Writing. *Co. Lit.* 115.

If all the *Witnesses* to a *Deed* are dead, continual and quiet Possession is a violent Presumption of the Legality of the Deed, and shall pass for Truth. 1 *Inst.* 6, &c.

A *Fine*, and five Years peaceable Possession, is a good Bar against Persons claiming. See Title *Fines*.

Presumption.

In Criminal Cases, if a Man in a House be run through the Body with a Sword, which occasions his Death, and it is proved by a Witness, that one was seen to come out of the House with a bloody Sword, and that no other Person was at that Time in the House; this is a strong Presumption,

sumption, and Circumstance, that he was Guilty of the Fact. Co. Lit. 373.

If Jurors find Circumstances and Presumptions to entitle the finding of Fraud, it is but *Evidence* and not any Matter upon which the Court may adjudge Fraud: The Jury must give their *Verdict* upon it, and not leave Matter of Evidence to the Court to judge; for it doth not appear to them. 10 Co.

Preservation.

If a Man in Danger of famishing, steal Vi-
tuals meerly to satisfy his *present Hunger*, it is
not Felony by our ancient Books; because it is
for the *Preservation of Life* only, and there is the
last Necessity for it. Staundf.

See more, *Necessity*.

Priority.

Debts *first due* ought to be *first satisfy'd*; for as
the first Creditor advances his Money before his
Debtor is incumber'd, it is but reasonable he
should be paid his Debt before the Discharge of
the subsequent Incumbrances. A *Prior Mortgage*
shall be first paid off; and next to that a second;
but if there be a third Mortgage, the Mortgagee
of the last, may purchase an *Assignment* of the
first, and add his own Mortgage to it, and by
that Means keep out the second Mortgagee: But
this I take to be a hard Case, and a Turn very
H Injurious

Injurious to the Persons lending their Money on the second Mortgage.

Debts first due, ought likewise to be first prosecuted; otherwise they will not in some Cases be first paid. For if there be two Judgments against a Person, and he that hath the last Judgment levy the Goods in Execution first, he shall be paid; and the other laid aside, unless there be an Overplus of Goods, &c. to satisfy the Judgment. *Comp. Attorn.*

There is no Priority of Time in Judgments; for first come, first paid.

Privilege. Vide **Peers.**

Promises.

Promises of Marriage; To answer for the Debt, or Mis carriage of another; To charge an Executor or Administrator, to answer Damages out of his own Estate; and Agreements not to be performed in a Year, &c. must be made in Writing, and signed by the Party charg'd, to entitle an Action. *Stat. 29 Car. 2. Frauds and Perjuries.*

But a Man must take care how he verbally promises or engages for a Stranger, in Buying and Selling; or of even commending, (which may encourage the Seller to trust) for thereby he may in some Cases be liable to the Debt; by the *Laws of Merchants.*

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for their
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their own Estate
in Cases of an
illegal promise to C. (which on such a simple
contract) arises from their own act & deed. Ergo
as much it is in the eye of the Law tantamount
to a prom in writing & not within the mischief
of the Stat of Frauds & perjuries, because an
immediate charge upon & by himself, which is stronger
if possible than a charge by second in writg. Being
a settled point by the Com Law & requiring no remedy,
has nothing to do with the Stat of Frauds.*

Property.

A Person who by *Contract* is to make another Possessor of any Thing, is to be *Proprietor* of the Thing itself, or his Contract shall be void. If a Man possess'd of a Horse, sell the same upon Condition to another that he pay him 5 l. for it at a certain Feast; but before the Feast, sells the Horse to a third Person; and after the Feast, the first Buyer fails of Payment, whereupon a Re seizure is made of the Horse: in this Case, the second Buyer shall not have the same, because at the Time of the second Contract, the Seller had neither Interest, Property, nor Possession of the Horse, but only Conditional, which is not sufficient. *Plowd.* 432.

The Property of a Horse, &c. sold by a Bargain and Contract, is in the Buyer immediately; but the Seller may keep the Horse till he is paid for the same; tho' he cannot prosecute for his Money 'till Delivery of the Horse to the Buyer, unless the Horse die between the Contract and Delivery. *Noy* 88.

Property in Lands. See Grants, &c.

Purchases.

Sometimes Persons, who have Occasion to sell an Estate, (as it is rated at so many Years Purchase, according to the Rent) to augment the Price of it, make a Lease for a short Term of Years, at a larger Rent than usual, and at the

same Time privately give Bond to allow the Tenant so much *per Annum* out of it; of which the Purchaser being ignorant, he pays at the Rate of the Rent mentioned in the Lease, perhaps five Pounds a Year in twenty, more than the Land is worth. To avoid this, when the Seller is suspected; it is necessary to insist upon a Lease of the Premises for a *long Term*, at the yearly *Value* it is *rated* on the Purchase; or that the Seller be obliged to make *Affidavit* that the Estate has been, *bona fide*, Let at the same Rent for twenty Years past before the Sale.

Affidavits are necessary, that Estates are free from Incumbrances, on making Purchases, Mortgages, &c.

Rape.

THIS is an Offence committed on a Woman's Body *against* her *Will*; and if the Female be under ten Years old, if the Fact be committed either with or against her Consent, it is Felony: But *Penetration* and Emission must be prov'd, otherwise 'twill be only Assault and Battery. *Stat. 18 Eliz. 3 Inst. 60.*

If a Woman yields thro' Force, it is *against* her Consent; and if she consent after the Fact, it is still a Rape. And a common Strumpet is under the Protection of the Law, and may ^{not} be forc'd; but some Consideration will be had in these Cases, especially by Juries, in Favour of the prosecuted. *Dalt. 105.*

A married

A married Woman may bring *Appeal* of Rape. If she will not prosecute, the Husband may; the Father, or next of Kin, may also have Appeal; and the Offender may be attainted at the Suit of the King, where the Woman consents afterwards. 3 *Inst.* 131. *Cro. Car.* 332.

Reason.

Reason, my Lord *Coke* tells us, is the very *Life and Soul* of the Law; and that what is *contrary* to it, is *unlawful*. And where *Maxims* of the Law admit of any Difference, those are to be preferr'd which carry with them the more perfect and excellent Reason. *Co. Lit.* 97. 183.

Where the Reason of the Law once ceases, the Law it self generally ceases; because Reason is the *Foundation* of all our Laws.

Releases.

As to Lands, a Release of a Man's *Right* in Fee-Simple, is not sufficient to pass a Fee-Simple; but a Release to a Man and *his Heirs*, will pass as a Fee-simple. By Release of all a Man's Right to Lands, all Actions, Entries, &c. are discharged; and a Release of Entries, or Right of Entry, bars all Power of Entry, &c. but in neither of these Cases it will not bar a Man of a *Right* that shall descend to him *afterwards*: And if a Man have a double Remedy, *viz* a Right of Entry, and an Action to recover, and then Release all Entries, by this he is not barred of his Action. *Co. Lit.* 273, 345. *Plowd.* 484.

Debts, Legacies, &c. may be releas'd and discharged, before or after they become due. A Release of all *Debts*, discharges all *Debts*, &c. A Release of all *Covenants*, discharges all *Covenants*, broken or not broken. A Release of all *Duties*, discharges all *Actions*, *Judgments*, *Executions*, &c. And a Release of all *Demands*, releases all *Rights* and *Titles* to *Lands*, *Warranties*, *Conditions*, *Statutes*, *Obligations*, *Contracts*, *Covenants*, *Debts*, *Duties*, *Judgments*, &c. all manner of *Actions*, *Real* and *Personal*: But it will not avoid an *Obligation subsequent* to the Release, or a *Promise* that is *future*; and if a Release of all *Demands* be made on a particular *Occasion*, in such *Case*, it may restrain the *Generality* of the *Words*. *Co. Lit.* 291. *Dyer* 56.

If a *Man* release all *Actions* to *A. B. Yeoman*, when he ought to be stiled *Gentleman*, the Release is good in *Law*, and the Addition void; but the *Law* is said to be otherwise in *Case* of *Dignities*, as of the *Titles* of *Knights*, *Barons*, *Earls*, *Dukes*, &c. because these are *Parcels* of their *Names*. *21 E. 4.* 72. *Accomp. Conv.* 131.

A Release of one *Obligor*, will discharge the others; and if a *Promise* be of two *Parts*, a Release of one *Part*, will discharge the other *Part*. If a *Lord* release to one *Jointenant*, it shall be good to both; And where two commit a *Trespass*, by Release to one, both are discharged. *1 Inst.* 232.

Representation.

X / Executors do more represent the Person of the Testator, than the Heir doth the Ancestor, by Reason

Reason of their Charge; for tho' an Executor be *not named* in a Mortgage, yet the Law appoints him to receive the Money; but the Law doth not appoint the Heir to receive the Money unless he be named. *Co. Lit. 209.*

Representatives of crown'd Heads, and Ministers of Justice, are to be treated in some Measure as those they represent.

Repugnancy. Vide Feoffment.

Reservation.

A Lessor may reserve to himself any Rent or other Thing, but the *Profits* of the Land; the Profits he may not reserve, because they are the *Thing it self*, and the Land is nothing without the Profits; wherefore a Condition to restrain a Grantee from taking the Profits is repugnant and void. *1 Inst. 206.*

If an *Infant* be seized of Lands in Fee, and he make a Lease for Years of it, *reserving no Rent*, this Lease is *void*; but if there be a *Rent reserved* upon the Lease, then it is but *voidable*, and by the Acceptance of the Rent by the Minor at his full Age, may be made good. *Plowd. 545.*

A Landlord may not *enter* upon the Lands of his Tenant to *cut Timber, &c.* unless he has *reserv'd* to himself the *Liberty* of doing it; tho' he can come on the Lands to view Waste, &c.

Revocation.

Letters of Attorney, and other *Authorities*, may be *revoked* by the Persons giving the Powers: And Submissions by Bond to Awards, may be *countermanded* by Deed; but then the Bond will be forfeited; so that 'tis good to have Bonds in sufficient Penalties in these Cases. A Power of Revocation in a *Deed of Uses*, is revoked by a new Declaration of Uses, or by Will, &c. without particularly mentioning the Revocation: And if there be a Proviso that a Use may be revoked by Indorsement; this will not confine it to Indorsement only, *Keb. 134. 8 Rep. 82.*

Robbery.

A Thief, either with or without a Weapon drawn, bids a Person on the Highway *deliver his Purse*, and he delivers it accordingly, this is Robbery. And if a Man with a Sword or Pistol drawn, bids another deliver his Purse, tho' he afterwards prays him to give *Alms*, it will be Robbery. A Man pursued *lets fall* his Hat, or his Money, and the Thief *takes it up*, is a taking from the Person. And if a Thief having *cut* a Man's *Pocket*, whereby it falls to the Ground, takes up the same, this is a taking from the Person, and Robbery. *H. P. C. 71. Dalt. 363.*

But if any Thing be taken from the Person on the Highway, *without putting in Fear*, it is *not Robbery* but Felony; for which the Offender shall have Clergy. The Value taken in Robberies is not

not material, for if it be but one Penny it is Robbery : But *something* must be taken, otherwise 'twill be only a Misdemeanor, punishable by Fine, Imprisonment, Pillory; &c. 3 *Inst.* 69. &c.

Where Robberies are committed on the Highway in the Day Time, of any Day except Sunday, the *Hundred* is chargeable. Stat. 27 *Eliz.*

Self Injuries.

IF a Man kills himself, it is called *Felo de se*, or Felony on himself, and incurs a Forfeiture of Goods, &c. But *Lunatics* are exempt from this Forfeiture; and Persons in these Cases, are generally brought in *non compos Mentis*, to save their Estates.

As a Man may not kill, so he may not wound himself. A lusty young Fellow, who caus'd his Companion to cut off his Hand, to qualify him for Begging, was indicted with his Companion and fined. *Co. Lit.* 127.

Sequestrations.

If a Defendant in *Execution* be a *Clergyman*, instead of a *Fieri Facias*, or *Capias ad Satisfaciendum*, &c. a Writ commonly goes to the Bishop, who thereupon sends forth a *Sequestration* of the Profits of his Benefice, directed to the Church-wardens, &c.

And where a *Suit* is depending, relating to a Church or Parsonage, which of two Persons
instituted

instituted is rightful Incumbent, &c. the Ecclesiastical Judge usually Decrees that the *Fruits* of the Church shall be *sequestred*, and collected by the Churchwardens; and after the Suit is determin'd, the Sequestration is to be taken off, and the Profits collected restored to him that prevails at Law.

Servants. See Authorities, Covenant, &c.

Simony.

The Statute 31 *Eliz.* enacts, That if any Person shall at any Time, for any Sum of Money, Gift, Reward, &c. or by Reason of any Promise, Bond, or Covenant for any Sum of Money, &c. Present any Person to any Benefice with Cure, or Living Ecclesiastical; or give the same in respect of any such corrupt Cause; every such Presentation, and every Admission thereupon, shall be void; and the Crown shall present for that Turn: The Persons giving or taking the Money, or taking or making such Promise, shall also forfeit double the Value of one Year's Profit of the Benefice, and the Person seeking and accepting the Benefice, be disabled thenceforth to enjoy the same.

This is what the Law calls *Simony*: tho' this Law hath been evaded by *Bonds of Resignation* enter'd into to the Patrons; whereby such Patrons have it in their Power to make sure to themselves a Recompence for their Preferments, for on Failure thereof, they may put the Bonds in Suit. But these Bonds have been adjudg'd void, as *Simoniackal*. 2 *Cro.* 274.

It

It is lawful to buy the *next Turn* of a Church, for a Stranger, *when it is full* of an Incumbent, unless the Parson in Being be sick in his Bed, ready to die, &c. But if a Man grants a next Presentation, for a Sum of Money, to be paid when the Church *becomes void*, this will be *Simony*. Hob. 105.

Slander.

For Words which occasion a *particular Damage*, viz. which affect a Man's *Life, Office, or Trade*; tend to loss of *Preferment* in Marriage, Service, &c. or to a Man's *Disinheritance*, Action of Slander may be brought: To call a Merchant Bankrupt; say of an Attorney he deals corruptly; call a Man false Justice of Peace; call an Heir Bastard; say of a Man that courts a Woman, he has the *French Disease*; call another perjur'd Person, &c. are Slanders which concern the Estate, Condition, and Life of a Man. 14 Co. 15.

And to reproach another with a *Heinous Crime*, as that he lay in Wait to Rob or Murder any Person, is likewise a notorious Slander; but *Words of Heat*, as where a Man in a Passion calls another Rogue, Knave, or Villain; unless he say Rogue in such an Affair, or Villain to such a Man, &c. will bear no Action.

And if a Man charge another that he hath *forsworn* himself, it may be construed he hath forsworn himself in common Conversation, and not in a Court of Record. 4 Co. 13.

Tenants.

Tenants.

as to emblements

Tenants *for Life*, may take upon the Lands demised, reasonable Estovers. And if Tenant *for Life* sows the Land, and die before the Corn is reaped, his Executors shall have the Profits of the Land, by reason his Estate was uncertain, and determin'd by the Act of God. And where any one hath an uncertain Estate, as Tenant in Tail after Possibility of Issue extinct, Tenant by Curtesy, &c. the Case is the same: (Though Grass, or Fruits, must be severed, because they are Parcel of the Inheritance.) But if Tenant *for Years* do Sow the Land, and his Term expires before the Corn is Ripe, the Landlord shall have it; unless it is covenanted between them, that the Tenant shall have his Crop at the End of his Term; for here the Term is certain, and it shall be adjudged his Folly to sow the Ground when he knew his Term would end before the Corn was Ripe. 1 *Inst.* 55, 68.

If Lessee at Will sow the Land, he shall Reap his Crop of Corn, though he be ejected by his Landlord before it is Ripe: He shall have free Entry, Egress and Regress to cut and carry away the same; and if he be disturbed therein, he may bring an Action on the Case, and recover Damages; but if the Lessee himself determines his Will, it will be otherwise. And if a Woman Copyholder, that holds Lands for her Widowhood, sow the Ground, and take Husband, the Landlord shall have the Profits; because the Estate

was

was determin'd by her own Act. Co. Lit. 55, 56.

A Tenant for *Half a Year*, or a *Quarter of a Year*, is said to be Tenant for *Years*; And where a Man holds an *Estate* for his Life, he may *Lease* it, reserving the Rent payable *Quarterly*, or *Monthly*, &c. to secure the Rent to the Time of his Death, as near as may be.

A Tenant is bound to repair his Tenement, unless it be mentioned in the Lease to the contrary. *Noy. Max.* 30.

See *Lease, Waste, Construction, &c.*

Tithes.

Tithes are to be paid but *once* in the *Year*, unless it be by particular Custom; (so that if Lands produce two Crops in a Year, the Parson shall not have Tithe of both, except there be a Custom justifying his Demand.) The Manner of Payment of Tithes, is for the most Part govern'd by *Custom*; the Customs of Parishes generally determine what are the Dues of the Parson, especially of *small Tithes*; but as to *Corn*, the Statutes take Place. If a Parishioner sows his Land, and before Severance of the Corn, the Parson *dies*, the *Successor* is entitled to the Tithes; but if the Corn is cut down, the Parson's Executors shall have the Tithes. *1 Cro.*

If a Parson sows his *Glebe* and dies, the *Executor* shall have the Corn sown by the Testator; but he shall pay Tithe to the Successor. And if a Parson sows his Land, and sells the Corn growing,

ing, the Buyer shall pay Tithes of it to the Parson. 1 Roll. Abr. 655.

Tithes are not paid for *Beasts* of the Plough, or for Things *Feræ Naturæ*, &c. Tithes under 40 s. are Recoverable on Complaint before two Justices of Peace, &c.

Treason.

Not only compassing the Death of the King, Queen, or Prince; Deflowring the King's Wife, or his eldest Daughter, or his eldest Son's Wife; Levying War against the King; Adhering to his Enemies; Counterfeiting the King's Seals, or Money, &c. are Treason: But for a Man to say he will be King *after the King's Death*; and to Prophecy when the King shall die, have been adjudg'd Treason; for these may imply Knowledge of a Conspiracy. Roll. Rep. 88.

If any Person shall be guilty of any open *Act* shewing a Design to depose the King; provide Arms to kill him, &c. these are a sufficient Declaration of compassing or imagining the Death of the King. And Taking up Arms to dethrone the King, to reform Religion, or the Laws, to remove Persons from the Ministry, resist the King's Forces, or do any Thing else for publick Reformation, is a Levying of War, and Treason. 3 Inst. 9.

Where a Man knoweth of any Treason, and conceals the same, it is only *Misprison* of Treason; but it must be a bare Knowledge only, for if he Consents to the Treason, he is a Traitor; and in Treason there are no Accessaries.

One who is only told in general, that there will be a *Rebellion*, without knowing the Persons concern'd in it, or the Place where, &c. may conceal it; but a Man must not go into the Company of Conspirators. 3 *Inst.* 138.

Declaring the King is *not lawful King*, &c. or hindring any Person next in Succession, from coming to the Crown, is High Treason by late Statutes.

Petit Treason.

If a Servant killeth his Master, a Wife her Husband, or a Religious Man kills his Prelate, or Superior; these are Petit Treason: Which is, where one, out of Malice, takes away the Life of a Subject, to whom he owes special Obedience. Stat. 25 *Ed.* 3.

If a Wife, or Servant, procure a Stranger to kill the Husband, or Master, in the Absence of such Wife, or Servant, neither the Procurer or Actor are guilty of Petit Treason, but of Murder only: But if the Wife, or Servant, be either actually present, or present in Judgment of Law, as being in the same House, when the Crime is committed, they will be guilty of Petit Treason, and the Stranger of Murder. *Moor* 91. *Dyer* 128.

A Wife and her Servant conspire to kill the Husband; though the Wife be absent when the Servant kills him, both will be guilty of Petit Treason. *Dyer*, *ibid.*

Trial.

Trial.

Persons committed to Prison for Capital Crimes, as *Treason, Felony, &c.* expressed in the Warrant, upon Prayer in open Court the first Week of the Term, or Day of the Sessions, are to be *brought to Trial*: If they are *not indicted* the next Term, or Sessions, upon Motion the last Day of the Term, they are to be admitted to *Bail*, unless the King's Witnesses are not ready; and if they are *not tried* the second Term, &c. they shall be *discharged*. Stat. 31 Car. 2.

A Peer is to be *tried by his Peers*, (but they are not sworn upon the Trial) and he cannot Challenge any of his Peers: This is where a Peer is tried at the Suit of the King, upon an Indictment for *Treason, Murder, or other Felony*; and in this Case, he may not wave his Trial by his Peers, and be tried by the Country. In *Appeal of Felony, &c.* at the Suit of the Party, he shall be tried by *Freeholders*; and so shall one that is Noble, in other Cases, if he be not a Lord of Parliament, such as a Lord of *Ireland*, Son of a Duke, Earl, &c. 1 Inst. 156. 3 Inst. 26.

If two of the King's Subjects *fight* in another Kingdom, and one of them is *kill'd*, it cannot be tryed by the Common Law; but it may be determined by the *Constable and Marshal*, according to the Civil Law: Or the Fact may be examined by the *Privy Council*, and tried by *Commissioners* appointed by the King, in any County of *England*. Stat. 33 H. 8. 3 Inst. 48.

In *Civil Causes*, in *B. R.* eight Days Notice must be given of Trial in *London* and *Middlesex*, and more if the Defendant live forty Miles from *London*; but eight Days Notice of Trial at *Affizes*, is good, let the Defendant live, where he will. On this Notice, the Defendant must *proceed to Trial*, or *Judgment* will pass by *Default*: And if a Plaintiff forbears to bring his Cause to Trial, or he will not try his Issue after it is join'd, in such Time as he ought by Course of the Court, the Defendant may take a *Venire Facias* directed to the Jury to try the Cause by *Proviso*; that he may free himself from Trouble, and recover Costs for unjust Vexation. *Comp. Attorn.* 324.

In Matters of great Weight, or where the Title in Question is intricate, the Judges above, upon Motion, will order a *Trial at Bar*; and then the Jury and Witnesses must come to the Courts at *Westminster*. And where excessive Damages are given by a Verdict, or the Verdict be given against Evidence, &c. the Judge may order a *new Trial*. *1 Inst.* 227.

See more of Trial, Indictments, Witnesses, &c.

Verdicts.

IF a Jury give a *false Verdict* in any Court of Record, either in a Real or Personal Action, where the Debt or Damage is above 40 s. they may be punished by *Attaint*: If a Jurymen shall *withdraw* from his Fellows, or keep them from giving

*Trial
at Bar*

giving their Verdict, without giving any Reason, he shall be fined; but if he *differ* from them in Judgment, he shall not be fined. *Dyer* 53.

All the Jurymen are to agree in their Verdict; and in Cases of Life or Limb, if the Jury cannot agree of their Verdict at the Assizes, they may be carried the Circuit 'till they do agree. *1 Vent.*

97.

The Verdict in *Capital* Cases must be given openly in Court, and not as a privy Verdict: In *Civil Cases*, a *privy Verdict* may be given out of Court, before one of the Judges; but it is to be affirm'd in Court; and the Jury may vary from their private Verdict, by Verdict in open Court. *1 Inst.* 226.

When a *general* Verdict is given, it is either in the Affirmative, or Negative; as Guilty, or not Guilty, &c. and *special* Verdict is where the Jury find the special Matter, or the Fact at large, and being doubtful, leave it to the Judges to determine what is the Law arising from the Fact. And in Cases of Difficulty, sometimes the twelve Judges are consulted in the Determining of a special Verdict. *Co. Lit.* 227.

Stealing Goods to the Value of 12 *d.* is Grand Larceny, for which a Man may be Hanged; but a *Jury* may find the Goods stol'n of less Value than 12 *d.* and so convict the Prisoner of Petit Larceny only; whereby the Punishment is only Whipping: And this may be done though the Man be indicted for stealing Goods of the Value of 20 or 40 *s.* *Hetley's Rep.* 66.

Upon Return of Verdicts (in Civil Cases) given at the Assizes to the Court above, the Judges there give Judgment for the Party for whom the Verdict

Verdict is found. But if a Verdict be *Ambiguous*, or *Insufficient*, no Judgment shall pass.

If Jurors *Eat or Drink* at the Cost of him for whom they shall give their Verdict, before they are agreed; or if they *cast Lots*, whether they shall find for the Plaintiff or Defendant, &c. the Verdict may be set aside.

Violence.

All Violence is *unlawful*; and if a Man Assault another with an Intention of beating him only, and he dieth, it is *Felony*. If a Father, Master, or Schoolmaster, *correct* a Child, Servant, or Scholar, with Things *not fit* for Correction, and Death ensues, it is *Murder*. And if a Man knocks another in the Head who is breaking his Hedges, &c. this will be *Murder*, because it is a *violent Act* beyond the Provocation. *Kel. Rep.* 64, 131.

Uses.

Limitation of Uses made by Writing, by other Limitation of Uses made in Writing may be *avoided*. A Man seized of Manors, covenants to stand seized to the Use of himself for Life, Remainder in Tail to A. his Daughter, &c. with Proviso, empowering him by Indenture to limit the Uses to any other; and afterwards he covenants to stand seized to the Use of himself, and a second Wife, &c. though there be no express Signification of his Purpose to determine the for-

** This latter* mer Uses, yet this last Indenture shall be good,
determinat and the former Uses shall cease. 10 Co. 144.
seems to be Indentures made for declaring the Uses of a
ground so as subsequent Fine or Recovery, are only Directory,
5 § of the Stat and do not bind the Estate or Interest of the
of the 27 Eliz ch Land. 5 Co. 26.

4 agit Conscious
fraudulent
conscience

Warranty.

Warranties made by *Tenant for Life*, descending on him in the Reversion or Remainder; and all *Collateral Warranties* by any Ancestor, who has no Estate of Inheritance in Possession in the Lands, shall be void against the Heir. Stat. 4 & 5 *Anna.*

Warranty of the *Husband*, of *Lands* coming in Right of the *Wife*, shall not bar the *Wife's* Heir unless there be Affets left of other Lands in Fee-Simple from the Husband. *Co. Lit.* 366.

How far Heirs bound by Warranty. See
Heirs.

Waffe.

To suffer *Houses* to Decay: cut down *Timber* the 1
Trees, (whether Oak, Ash, or Elm, &c.) Plough *Nunc*
Lands that have not been plough'd Time out of) t
Mind; dig *Quarries* of Stone, Gravel, or any *Chatt*
Thing enclos'd in the Earth, without an express *they*
Covenant for it, are Waste. But if an House b *Witne*
destroy in his

destroy'd by Tempest, Thunder and Lightning, Floods, Enemies, &c. without any Possibility of the Lessee's preventing the same; or if a Tenant cut Trees for Reparation of Houses only, &c. these are not Waste. 1 Inst. 53.

The taking away or breaking down of Wain-cot, Doors, Windows, Benches, &c. fixed to the Freehold, is Waste. But if they are fix'd by the Lessee, they may be taken down by such Lessee before the End of the Term; so as he do not thereby weaken the Freehold, but leave the same in as good Condition as it was at the Time he fixed them. Salk. Rep. 368.

Action of Waste is maintainable against Tenant by the Curtesy, in Dower, for Life, or Years; and treble Damages are recoverable. Stat. 6 Ed. 1.

Wills.

Wills were ordained by the Statute 32 H. 8.

And by the Statute 29 Car. 2. for Prevention of Frauds, all Devises of Lands, or Tenements, are to be made in Writing, and sign'd by the Devisee, in the Presence of three credible Witnesses:

No Devise in Writing shall be revoked but by some other Will in Writing; or by cancelling the same by the Testator himself, &c. And

Nuncupative Wills (viz. by word of Mouth on-ly) though they are good for the Disposition of Chattels; if the same exceed the Value of 30 l.

they must be made in the Presence of three Witnesses, bid to bear Witness by the Testator, in his last Sickness, &c.

no manner must be committed to writing within 6 months from the time of the making of the will - or else A Testator will not be admitted to be proved - he

late

A Testament written by a Man himself, tho' not signed and sealed, proved to be his Writing, has been adjudg'd good; for such Will is said to approve itself: But it must be written in some Order, and not be a scribbled Paper. And it has been held, That if one by Letter express his Will for the Disposal of his Lands, it is sufficient; the Case of a Gentleman beyond Sea; but both of these, I take it, were adjudg'd before the Statute, 29 Car. 2.

If a Man devises, that A. B. shall be Heir of all his Land, and the Devisor have Fee, the Devisee shall have Fee; for this Devise carries such Estate to A. B. as the Devisor had. A Devise to a Man *imperpetuum*, is a good Devise in Fee; but in a Grant it would be but for Life, for want of the Word Heirs: For Wills, by Construction of Law, may have different Operations to other Deeds. Co. Lit. 25, &c. A Devise to a Man and all his Blood, passes a Fee-Simple; but a Devise to one, and his Seed, passes an Estate Tail only. Swinb. 293.

A Condition in a Will is a Thing odious in Law and Devises, upon Condition that a Man or Woman do not marry any Person, &c. the Condition is unlawful, and void. And where Wills tend to *Disinherit* an Heir, the Words must be strong, clear and apparent, or they will not be allow'd. Mod. Ca. 106.

A Man can make but one Testament to take Effect; and the last Will shall stand in Force; but he may make as many Codicils as he please. A Devise must be of Lands in Fee-Simple, or Chattels; for entail'd Lands may not be devised. And if a Man Devises Lands in Fee, or for Life, the Devisee may enter without any appointment.

of the Executor: But in Case of Goods, they must be taken by the Assent and Appointment of the Executor. *Co. Lit.* 111.

If a Man Devise a *Fee-Simple* to his own Right Heirs, by the Name of Heirs, they shall be in by Descent, and the Devise is void: And a Devise of Goods to an Executor, is also void; for he shall have the Goods as Executor, not as Devisee. *Hob.* 30. If a Term be devised to one for Life, Remainder to another for Life, Remainder to a third, fourth, &c. for Life; this is a good Devise, if all the Persons were in *Esse* at the Time of the Devise: But if the Remainder Devise be to one for Life; who is not then in *Being*, (as the first Son, &c.) there no Limitation of a Term may be beyond it. *Sid. Rep.* 451.

Where a Legacy is given to a Man, and he dies before the Testator, or before due, it is void. But in case a Sum of Money be to be paid to a Man, within four Years after the Death of the Testator, and before the four Years run out, the Legatee dies, his Executors, or Administrators, may recover the Legacy. *Dyer* 59. *Plowd.* 345.

A Man makes his Will, and thereby Devises, That his two Executors shall sell Lands, for Payment of Debts, Legacies, &c. and one of them dies, the Survivor hath not Power to sell it; but if he had devised his Lands to his Executors, to be Sold, the Survivor shall sell it. *Co. Lit.* 181. †

In a Will of Goods, there must be an Executor named; but of Lands it is otherwise, because an Executor has nothing to do with the Freehold. A Will of Lands ought to be proved in Chancery; but of Goods in the Spiritual Court.

† This points out the necessity of limiting a time of payment after Testator's death —

† This points out the necessity of saying in such a Devise, "or the Survivor of them" if only two executors; but if more than the Survivor or Survivors of them

Witnesses.

Witnesses cannot testify a Negative; but only an Affirmative. To a Jury, *one* Witness may be sufficient; but in criminal Cases, for *Treason*, there must be *two* Witnesses, produc'd Face to Face. 3 *Inst.* 163, &c.

In *Robbery* on the Highway, *Rape*, &c. every Man or Woman may be a *Witness* in their own Cause; because Crimes of this Nature may admit of no other Proof: But Regard is to be had to the Reputation and Circumstances of the Persons prosecuting; which, when bad, may invalidate their Testimony. 3 *Co.* 37.

In *Chancery* Business, Plaintiff or Defendant, after Answer put in, until Publication is past, may *Examine* what *Witnesses* they please; but before Answer, and after Publication, no Examination will be allow'd but by special Order, on special Cause being shewn.

If a Witness be not able to travel, a Judge may excuse his Non-appearance, and certify his Examination. 3 *Inst.*

Writs.

Four Persons may be included in one *Writ*, but there must be *several Warrants* from the Sheriff for Execution. Until a Defendant is arrested, *Writs* may be *renew'd* every Term: But if the *Latitat* remain unrenewed five Terms, after taken out in *B. R.* you must have a new *Latitat*, for the old one cannot then be renew'd.

It

Law Quibbles.

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It is very unsafe to keep *Writs unfiled*, (the Filing them being the Warranty for the Proceedings) and least a *Caveat* be obtained from some Judge in that Behalf, which is called *Ne recipiatur*. And for not filing Writs, the Term they are returnable, you pay when you File them a *Post terminum* for every Writ, every Term. *Comp. Attorn.*

Variance between the Additions, or Sums, &c. in the Writ, and the Declaration will *abate* the Writ.

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